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The **NORTH CAROLINA REGISTER**

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ISSUE DATE: MAY 1, 1990

Volume 5 • Issue 3 • Pages 236-285



INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size, single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes, totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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NORTH CAROLINA REGISTER



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04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
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10/01/91	09/10/91	09/17/91	10/31/91	02/01/92
11/01/91	10/11/91	10/18/91	12/01/91	03/01/92
12/02/91	11/07/91	11/14/91	01/01/92	04/01/92

* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.

**EXECUTIVE ORDER NUMBER 107
NORTH CAROLINA GOVERNOR'S
COMMISSION ON WORKFORCE
PREPAREDNESS**

North Carolina has enjoyed the status of being the first in economic development in the nation for three consecutive years. In large part, this is due to the availability of a highly motivated, competent workforce which is devoted to the work ethic.

However, global economic and technological forces are creating a new knowledge-intensive economy that requires a highly-adaptable and better-educated worker. The new workplace demands workers with good basic academic skills, problem-solving skills, communication skills, and leadership skills. Most importantly, employers need workers who know how to learn and can readily adapt to a changing work environment. Yet, many North Carolinians are not prepared for the new skill requirements of the workplace. Too many problems persist among our human resources that suggest a growing gap between the skills employers need and the skills both new and experienced workers bring to the labor market. These problems include an unacceptable number of high school dropouts, high school graduates who show serious skill deficiencies, and adults who are unemployed, underemployed or face dislocation in the future because of illiteracy or inadequate basic skills.

Further, projections indicate that future demographic shifts will create both opportunities and problems regarding workforce preparedness. A shrinking pool of new workers provides us a window of opportunity to lift out of poverty those segments of our population who historically have been stalled on the lower rung of our economic ladder. However, this same population that we will depend upon to relieve the growing labor shortage faces formidable barriers to employment because they are the least skilled of our citizens.

The education and skill level of North Carolina's human resources are the foundation of our economic prosperity and a means by which we can increase productivity, raise our standard of living and lift our poor out of poverty. Recognizing this basic premise, we must begin to build an education, employment and training system that will upgrade the skills of our existing workforce and prepare new workers for a constantly changing economy.

For these reasons, I hereby establish a Commission on Workforce Preparedness to raise these concerns to the highest level of commitment among the agencies of the State of North

Carolina. Further, this Commission is to assure the greatest cooperation possible between public and private entities in resolving these concerns.

Therefore, by authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. ESTABLISHMENT. There is hereby established the North Carolina Governor's Commission on Workforce Preparedness.

Section 2. MEMBERSHIP (a) The Commission shall be composed of the following officials of the State of North Carolina and public members:

Commissioner - Department of Labor
Superintendent - Department of Public Instruction
Secretary - Department of Administration
Secretary - Department of Economic and Community Development
Secretary - Department of Human Resources
Secretary - Department of Correction
President - North Carolina System of Community Colleges
President - University of North Carolina
Chairman - Employment Security Commission
Chairman - State Board of Education
Chairman - N.C. Job Training Council
Chairman - N.C. Business Committee for Education
Chairman - N.C. Advisory Council on Vocational Education
Eight employers who fairly represent the spectrum of employers and the population in North Carolina.
Three state Senators to be appointed by the Lt. Governor.
Three representatives appointed by the Speaker of the House of Representatives.
Three members at large.

(b) The Chairman shall be appointed by, and serve at the pleasure of, the Governor.

(c) The Secretary of Department of Economic and Community Development, the Superintendent of Public Instruction, the President of the N.C. System of Community Colleges, and the Vice President of the University of North Carolina shall be the Vice-Chairmen of the Commission.

Section 3. MEETINGS. (a) The Commission shall meet at such times and locations as designated by the Chairman but not less than quarterly. All members who are public officials shall attend all meetings in person unless prevented

from doing so by illness or by their official duties having priority over their responsibilities as Commission members, in which case absent members may be represented by their designees who shall be authorized to vote.

(b) For the purpose of conducting business, a quorum of the Commission shall consist of 16 members or their designees.

Section 4. PURPOSE. (a) Our goal in establishing the Commission is to develop strategies that will upgrade the skills of our existing workforce and prepare new workers for a constantly changing economy. Consequently, the Commission shall prepare and submit forthwith to the Governor a strategic and comprehensive plan for effectively addressing present and future workforce needs in North Carolina.

(b) Prior to submitting the comprehensive plan to the Governor, the Commission may develop and recommend to the Governor such intermediate measures in the areas of Workforce Preparedness as the Commission deems appropriate.

Section 5. INTER-AGENCY COMMITTEES. The Commission on Workforce Preparedness may establish such inter-agency committees as are necessary to provide the Commission with expert advice and assistance. These inter-agency committees may consist of personnel from the public agencies and individuals from the private section.

Section 6. COOPERATION OF STATE AGENCIES. On request all agencies and departments of the State of North Carolina shall cooperate with the Commission in the development of the comprehensive plan, and in the development and recommendation to the Governor of such immediate actions or initiatives as determined under Section 4(b) of this Order.

Section 7. ADMINISTRATIVE SUPPORT AND EXPENSES. Those agencies and departments represented on the Commission shall provide such staff and administrative support as may be requested by the Commission.

No per diem will be paid to commission members. Those members of the Commission who are state employees shall receive travel and subsistence in accordance with G.S. 138-6. Those members of the Commission who are also members of the General Assembly shall receive travel and subsistence in accordance with G.S. 120-3.1(a)(2)-(a)(4). Those members of the Commission who are not state employees shall

receive travel and subsistence in accordance with G.S. 138-5 to be paid by the Department of Administration.

Section 8. This order shall be effective immediately and shall remain in effect until terminated.

Done in Raleigh, North Carolina, this the 14th day of March, 1990.

**EXECUTIVE ORDER NUMBER 108
REESTABLISHMENT OF NORTH CAROLINA
DRUG CABINET AND RESCISSION OF
EXECUTIVE ORDERS 80, 81, AND 97**

WHEREAS, by Executive Order Number 80, I established the North Carolina Drug Cabinet to develop and submit to the Governor a proposed comprehensive plan for effectively combating trafficking and illegal drug use in North Carolina, including appropriate punishment and for the education and treatment of those citizens suffering from drug abuse and dependency; and

WHEREAS, on March 19, 1990, the North Carolina Drug Cabinet submitted to me a comprehensive plan for effectively combating trafficking and illegal drug use in North Carolina, including appropriate punishment and for the education and treatment of those citizens suffering from drug abuse and dependency; and

WHEREAS, it appears to me after a thorough review of the North Carolina Drug Cabinet's comprehensive plan that implementation of the plan will be best accomplished by a central agency responsible for the coordination of the state's anti-drug efforts;

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. The North Carolina Drug Cabinet is hereby reestablished as the central agency responsible for the coordination of the state's anti-drug effort.

Section 2. Membership. (a) The North Carolina Drug Cabinet shall be composed of the following officials of the State of North Carolina:

- (1) the Lieutenant Governor;
- (2) the Attorney General;
- (3) the Superintendent of the Department of Public Instruction;
- (4) the Secretary of the Department of Administration;
- (5) the Secretary of the Department of Correction;
- (6) the Secretary of the Department of Crime Control and Public Safety;

- (7) the Secretary of the Department of Economic and Community Development;
 - (8) the Secretary of the Department of Environment, Health and Natural Resources;
 - (9) the Secretary of the Department of Human Resources; and
 - (10) the Secretary of the Department of Transportation.
- (b) The Lieutenant Governor shall be the Chairman of the Cabinet.

Section 3. Meetings. (a) The N.C. Drug Cabinet shall meet at such times and locations as designated by the Chairman but not less than monthly. All members shall attend all meetings in person unless prevented from doing so by illness or by their official duties having priority over their responsibilities as Drug Cabinet members, in which case absent members may be represented by their designees.

(b) For the purpose of conducting business a quorum of the Drug Cabinet shall consist of seven members or their designees.

Section 4. Responsibilities. (a) The North Carolina Drug Cabinet shall be responsible for:

- (1) coordinating and overseeing the implementation of the comprehensive "Plan of Action for the State of North Carolina";
- (2) developing a formal evaluation procedure for state drug and alcohol programs and to systematically evaluate on an annual basis all state drug and alcohol programs;
- (3) monitoring state drug and alcohol programs to reduce overlap of programs;
- (4) monitoring federal and state dollars to enhance greater utilization of available resources;
- (5) developing a uniform system of collection and dissemination of drug and alcohol related data, research, and programmatic funding information;
- (6) recommending to the Governor changes in state drug and alcohol policies, programs and statutes;
- (7) assisting state agencies in disseminating information on new anti-drug laws, policies and available support;
- (8) linking federal and state anti-drug and alcohol resources with state and local agencies and programs in need of support;
- (9) coordinating the state's Challenge Program for building county and municipal task force addressing local drug and alcohol related programs and policies;
- (10) develop a state "Partnership for Drug Free Public Housing" program which addresses the special needs of inner city

communities being destroyed by drug activities;

- (11) develop and implement the "N.C. Drug Free" public awareness campaign; and
 - (12) other duties as may be assigned by the Governor.
- (b) The North Carolina Drug Cabinet shall report on its activities and progress on a semi-annual basis to the Governor and the public.

Section 5. Advisory Councils. The Governor's Council on Alcohol and Drug Abuse Among Children and Youth established by Executive Order 23 and the Governor's Inter-Agency Advisory Team on Alcohol and Drug Abuse established by Executive Order 53 shall act as advisors to the Drug Cabinet. The Drug Cabinet may establish other advisory councils as needed to provide the Cabinet with expert advice in specific areas such as law enforcement related activities, health treatment and education.

Section 6. Administrative Support and Expenses. Those agencies and departments represented in the Drug Cabinet shall provide such staff, administrative and financial support as may be requested by the Governor.

Section 7. Rescission of Executive Orders 80, 81, and 97. Executive Orders 80, 81, and 97 are hereby rescinded.

Section 8. This order shall be effective immediately and shall remain in effect until terminated.

Done in Raleigh, North Carolina, this the 19th day of March, 1990.

EXECUTIVE ORDER NUMBER 109
THE NORTH CAROLINA SPORTS
DEVELOPMENT COMMISSION

WHEREAS, the Department of Economic and Community Development is charged with the duty of promoting and assisting in the total economic development of North Carolina; and

WHEREAS, sporting events represent an expanding market with positive economic effects; and

WHEREAS, it is the duty of the Sports Development Office to develop and promote efforts to recruit sporting events, sporting franchises, and training centers to North Carolina; and

WHEREAS, an advisory commission to advise, assist, and support the Sports Development Office and the Department of Economic and Community Development in matters involving sports development initiatives is necessary.

NOW THEREFORE, By the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. There is hereby established the North Carolina Sports Development Commission.

Section 2. Membership. The Governor shall appoint the members of the Commission. The Commission shall consist of no fewer than 12 members and no more than 24 members. Members shall be representatives of sports agencies and organizations, government entities, the business community, or individuals who have an interest in sports development.

Section 3. Terms. All members shall serve at the pleasure of the Governor.

Section 4. Officers. The officers of the Commission shall be a Chairman, Vice-Chairman, and Secretary. The Governor shall designate a Chairman from the membership. The Vice-Chairman and Secretary shall be elected by the Commission. All officers shall serve for a term of one (1) year. Vacancies in any office shall be filled for the unexpired term by election or appointment depending on the office vacated. The officers shall have the following duties:

Chairman: It shall be the duty of the Chairman to preside at all meetings of the Commission, to appoint all committee chairmen, to assist all chairmen in planning of committee activities, to supervise all chairmen as to the management of committee plans, to call all special meetings with the approval of the Assistant Secretary for Economic Development, and to be an ex officio member of all committees.

Vice-Chairman: The Vice-Chairman shall assist the Chairman and in the absence of the Chairman shall perform the duties of the office of the Chairman. The Vice-Chairman shall accept special assignments from the Chairman and perform other such duties as delegated by the Commission.

Secretary: The Secretary shall be responsible for the minutes of the meetings of the Commission and the Executive Committee, and shall keep an up-to-date list of names and addresses of Commission members and a record of their attendance at meetings.

Section 5. Executive Committee. There shall be an Executive Committee consisting of the Officers of the Commission, the Assistant Secre-

tary for Economic Development, and the Director and the Assistant Director of the Sports Development Office. The Executive Committee may exercise all of the operating authority of the full Commission within the power delegated to it by the Commission. The full Commission shall remain responsible for the actions of the Executive Committee and shall remain responsible for supervision of the Executive Committee.

Section 6. Meetings. The Commission shall meet at least quarterly. Members shall receive notice of full Commission meetings at least twenty-one (21) days prior to the meeting. A quorum shall consist of a majority of the current Commission membership. The 1989 revised edition of Roberts Rules of Order shall be the parliamentary authority for all matters of procedure.

Section 7. Administrative Support and Expenses. The staff of the Sports Development Office shall provide administrative support to the Commission. A Sports Development Office staff member shall serve as Administrator to the Commission. Permanent records of all Commission business shall be maintained in the Sports Development Office and shall be the responsibility of the Administrator. While on official business, members of the Commission who are State employees will review necessary travel and subsistence expenses as authorized by N.C.G.S. 138-6. Members of the Commission who are not State employees will receive per diem, travel and subsistence as authorized by N.C.G.S. 138-5. Funds for reimbursement of such expenses shall be made available from funds authorized by the Sports Development Office.

Section 8. Duties and Powers. The Commission shall perform such duties as assigned by the Governor. It shall have the following specific duties, powers, and functions:

- (1) assist the Sports Development Office in planning and implementation of sports development initiatives;
- (2) act as spokespersons for the State of North Carolina in its efforts to attract sports activities;
- (3) assist in the creation and updating of directories containing the following information:
 - A. current sporting events being held in our State;
 - B. facilities available for sporting events in our State; and
 - C. available sporting events and bid deadlines;

- (4) assist the Sports Development Office in forming a partnership with the governing associations of sporting activities, the North Carolina business community, individuals who conduct major and minor sporting events, and key facility managers in our state;
- (5) assist in bid preparation and project promotion; and
- (6) advise and assist in the development of future goals and objectives for the Sports Development Office.

The Commission's role shall be advisory in nature. All decisions regarding the adoption of policies shall be the responsibility of the Secretary of the Department of Economic and Community Development and the Sports Development Office.

Section 9. Semiannual Report. The Commission shall report semiannually to the Governor regarding the progress of sports development in North Carolina.

This Order is effective immediately and shall remain in effect until March 29, 1992, unless amended or extended by further Executive Order of the Governor.

Done in Raleigh, North Carolina, this the 29th day of March, 1990.

**EXECUTIVE ORDER NUMBER 110
GOVERNOR'S ADVISORY COUNCIL
ON INTERNATIONAL TRADE**

WHEREAS, international trade is an important factor in the growth of the economy of our State; and

WHEREAS, it has been made to appear to me that an advisory council is necessary to foster international trade;

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and laws of North Carolina, IT IS ORDERED:

Section 1. Establishment. There is hereby established the Governor's Advisory Council on International Trade.

Section 2. Membership. The Governor shall appoint persons to serve on the Advisory Council. The Council shall consist of no fewer than 9 members. Those persons appointed shall be leaders in various aspects of international trade.

Section 3. Chairmanship and Terms. The Governor shall designate the Chairman of the Advisory Council. All members shall serve at the pleasure of the Governor.

Section 4. Meetings. The Council shall meet on a quarterly basis or as directed by the Governor or the Secretary of the Department of Economic and Community Development.

Section 5. Duties and Powers. The Council shall perform such duties as assigned by the Governor which shall include, but not be limited to, the following:

- a. serve as a forum for international trade leaders in North Carolina to exchange concepts in international trade development;
- b. facilitate the development of international trade initiatives and communicate these initiatives to economic development and business interests in the State;
- c. offer advice regarding international trade to the Department of Economic and Community Development;
- d. build a network of public and private interests in international trade;
- e. assist in creating a plan for international trade development in North Carolina; and
- f. set specific goals and monitor the progress of international trade development.

Section 6. Administration and Expenses. Administrative support for the Council shall be provided by the Department of Economic and Community Development. While on official business, members of the Council shall be entitled to such per diem and reimbursement for travel and subsistence as may be authorized for members of State Boards and Commissions generally, pursuant to N.C.G.S. 138-5 and 138-6. The Secretary of the Department of Economic and Community Development shall provide funds for this purpose.

Section 7. Semiannual Report. The Council shall report semiannually to the Governor regarding the progress of international trade development.

This Executive Order is effective immediately and shall remain in effect until March 29, 1992, unless terminated earlier or extended by further Executive Order.

Done in Raleigh, North Carolina, this the 29th day of March, 1990.

[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 9, 1990

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P.O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the following voting changes for the board of commissioners and the board of education of Perquimans County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c:

1. Act No. 104, H.B. No. 789 (1989), which provides for an increase in the number of county commissioners from five to seven, the elimination of the residency requirement, the use of plurality vote in primary elections, the method of staggering terms, the appointment of two interim board members, and the implementation schedule; and

2. Act No. 105, H.B. No. 790 (1989), which provides for an increase in the number of school board members from five to seven, the elimination of the residency requirement, the method of staggering terms, the appointment of two interim board members, and the implementation schedule.

We received the information to complete these submissions on February 9, 1990.

We have carefully considered the information you have provided as well as comments and information from other interested parties. At the outset, we note that presently both the board of commissioners and the school board are chosen in at-large elections, and further that each board member is elected from a particular residency district. Our analysis of the election returns indicates that, in the context of an apparent pattern of racially polarized voting, this election system has enabled the white majority of the electorate to control county elections to the extent of precluding black voters from electing candidates of their choice to county office. Indeed, despite numerous black candidacies, which have been supported in major part by black voters, no black person has been elected to either board.

As we understand it, it was in this setting that members of the black community approached county officials with their concerns that the at-large system denies black citizens an equal opportunity to participate in the political process, a result prohibited by Section 2 of the Voting Rights Act, 42 U.S.C. 1973. In response, a study committee was established to examine whether a district method of election should be adopted.

However, the steps taken by the county in pursuit of its stated goal of considering the adoption of a districting plan would appear to have been of a rather dubious nature. The only two districting options ever presented to the study committee for its consideration, by those retained by the county to advise them in this regard, were plainly flawed. One option was a malapportioned plan for five-member boards which contained a black majority district; the other was an unusually configured proposal for seven-member boards with a double-member district which would have a black population majority. These options were accompanied by a recitation of numerous problems that allegedly would result from adopting either districting concept and, in fact, the committee essentially was told that any districting

of the county likely would pose practical as well as constitutional problems. These perceived problems also were impressed upon the minority group representatives who had been advocating the change to districts.

Relying on these less than candid representations, the study committee recommended and the legislature later enacted the instant changes which retain the at-large election method as modified by the elimination of the residency district requirement. However, contrary to the representations made by those advising the committee in behalf of the county, our analysis of the demographic patterns in the county indicates that none of the purported concerns advanced by the county poses any real obstacle to adopting a fairly drawn, constitutional districting plan. In fact, relatively simple and easily discernible modifications to the options put forth by the county would result in a plan under either the 5-member or 7-member format which would have black majorities in districts electing one of five member or two of seven members. The county seems readily to concede that such districting plans would afford black voters a more realistic opportunity to elect representation of their choice than does the at-large system even as modified by the removal of the restrictive residency district feature.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change neither has a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). The effect standard requires that a change not "lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." Beer v. United States, 425 U.S. 130, 141 (1976). The submitted changes, by removing the residency district requirement and thus allowing blacks to utilize the election device of single-shot voting, do not have a prohibited retrogressive effect. However, even though the change here cannot be said to be retrogressive, the manner in which it was accomplished seems to have been calculated to maintain black voting strength at a minimum level and such an intent cannot be countenanced under the Voting Rights Act. City of Richmond v. United States, 422 U.S. 358 (1975); Busbee v. Smith, 549 F. Supp. 494 (D.D.C. 1982), sum. aff'd, 459 U.S. 1166 (1983). In any event, under the circumstances involved here, I cannot conclude, as I must under the Voting Rights Act, that the Section 5 burden has been satisfied in regard to purpose. Therefore, on behalf of the Attorney General I must object to the changes in the method of electing both boards occasioned by Act Nos. 104 and 105. With regard to the other submitted changes (the increase in the size of the boards, and the implementation and appointment provisions), no determination is appropriate because they are directly related to the changes to which an objection is being interposed.

Of course, as provided by Section 5 of the Voting Rights Act, the board of commissioners and the board of education have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes do not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the submitted changes continue to be legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Perquimans County Board of Commissioners and the Perquimans County Board of Education plan to take with respect to this matter. In that regard, I have asked the Voting Section to consider whether the at-large system violates Section 2 of the Act, should the boards determine to take no further action toward changing that system. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice
Civil Rights Division

JRD:MAP:KIF:lrj
DJ 166 012-3
Z9772

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

April 9, 1990

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P.O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the proposal to reopen the candidate filing period for the May 1990 primary election pursuant to the voting changes occasioned by Act No. 104 (1989) for the board of commissioners in Perquimans County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on February 9, 1990.

On April 9, 1990, the Attorney General interposed an objection to the method of election changes adopted in Act 104. Because the submitted filing period is directly related to the objected-to changes, the Attorney General will make no determination with respect to this matter. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.35).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Barry H. Weinberg
Acting Chief, Voting Section

VOTING RIGHTS ACT FINAL DECISION LETTERS

JRD:MAP:KIF:lrj
DJ 166 012-3
Z9773

U.S. Department of Justice
Civil Rights Division

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

April 9, 1990

Michael Crowell, Esq.
Tharrington, Smith & Hargrove
P.O. Box 1151
Raleigh, North Carolina 27602

Dear Mr. Crowell:

This refers to the proposal to reopen the candidate filing period for the May 1990 election pursuant to the voting changes occasioned by Act No. 105 (1989) for the board of education in Perquimans County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on February 9, 1990.

On April 9, 1990, the Attorney General interposed an objection to the method of election changes adopted in Act 105. Because the submitted filing period is directly related to the objected-to changes, the Attorney General will make no determination with respect to this matter. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.35).

Sincerely,

John R. Dunne
Assistant Attorney General
Civil Rights Division

By:

Barry H. Weinberg
Acting Chief, Voting Section

**TITLE 10 - DEPARTMENT OF HUMAN
RESOURCES**

Notice is hereby given in accordance with G.S. 150B-12 that the Commission for Health Services intends to adopt rule(s) cited as 10 NCAC 10G .1001 - .1005; and .1301.

The proposed effective date of this action is September 1, 1990.

The public hearing will be conducted at 3:00 p.m. on May 31, 1990 at Hearing Room (Ground Floor), Archdale Building, 512 North Salisbury Street, Raleigh, North Carolina.

Comment Procedures: Any person may request copies of the proposed rules by contacting John P. Barkley, DEHNR, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-7247. Written comments on these rules may be sent to Mr. Barkley at the above address or submitted at the public hearing. If you desire to speak at the public hearing, notify Mr. Barkley at least three days prior to the public hearing. At the discretion of the Chairman, the public may also be allowed to comment on the rules at the Commission Meeting. Fiscal notes on applicable rules are available from Mr. Barkley.

**CHAPTER 10 - HEALTH SERVICES:
ENVIRONMENTAL HEALTH**

**SUBCHAPTER 10G - SOLID WASTE
MANAGEMENT**

**SECTION .1000 - SOLID WASTE
MANAGEMENT LOAN PROGRAM**

.1001 DEFINITIONS

In addition to the definitions in Rule .0101 of this Subchapter, the definitions in G.S. 1591-3 shall apply throughout this Section.

Statutory Authority G.S. 1591-11.

.1002 APPLICATION

(a) Units of local government shall file three copies of the application for loan with the Division. The application shall include the following:

- (1) A detailed description of the type and useful life of the project to be financed or refinanced;
- (2) A statement of the need of the project and how the project compliments an integrated approach to solid waste management;

- (3) The amount of financing or the cost of the project sought;
- (4) The credit rating, if any, of the unit of local government;
- (5) The availability and cost to the unit of local government of other methods of financing;
- (6) The construction, disbursement, and management procedures in effect in the unit of local government; and
- (7) Documentation that a public hearing has been held on the issue of obtaining a loan in accordance with G.S. 1591-10(c).

(b) An applicant shall furnish information in addition or supplemental to the information contained in its application upon written request.

(c) Applicants may apply for a loan prior to arrangement for repayment.

Statutory Authority G.S. 1591-11.

.1003 ELIGIBLE PURPOSES

(a) Loans may be made to finance the cost of acquisition or construction of solid waste management projects including without limitation:

- (1) The purchase of equipment or facilities;
- (2) Construction costs of an incinerator;
- (3) Land to be used for recycling facilities;
- (4) Leachate collection and treatment systems;
- (5) Liners for landfills;
- (6) Monitoring wells;
- (7) Recycling equipment and facilities;
- (8) Construction cost of composting facilities;
- (9) Volume reduction equipment; and
- (10) Financing charges.

(b) Projects may not include:

- (1) The operational and maintenance costs of solid waste management facilities or programs;
- (2) General planning or feasibility studies;
- (3) The purchase of land, unless the land is to be used for a recycling facility; or
- (4) Groundwater and surface water corrective action projects.

Statutory Authority G.S. 1591-11.

.1004 SCREENING OF APPLICATION

Prior to rating an application according to the priority factors established under Rule .1005 of this Section, the Division shall conduct a preliminary review of each application to determine the feasibility and appropriateness of the project. The following factors shall be considered in deciding whether to assign a priority to a loan application:

- (1) Consistency of the project with State solid waste management policy;
- (2) Whether the type and scale of the project are consistent with the identified needs of the applicant;
- (3) Technological feasibility of the project; and
- (4) The likelihood that the project can be permitted under these Rules.

Statutory Authority G.S. 159I-11.

.1005 PRIORITY FACTORS

Procedures for establishing the rating of projects are outlined in the following:

- (1) Landfill Capacity (Maximum Value 200 points)
Existing Landfill permitted operational capacity:
 - (a) Less than two years.....200 points
 - (b) More than two years.....100 points
- (2) Financial Need (Maximum Value 100 points)
All applicants must be rated, based upon the current bond rating of the local government as established by Moody's, Standard and Poors, or the North Carolina Municipal Council. When rated by two national agencies, the higher rating will prevail. A national bond rating will always prevail over a NCMC rating. Ratings will be checked for each loan cycle:
 - (a) Units which have a North Carolina Municipal Council (NCMC) rating below 75 and no national bond rating.....100 points
 - (b) Units which have a national bond rating below A- OR NCMC rating 75-79 75 points
 - (c) Units which have a national bond rating of A or A- OR NCMC rating 80-85 50 points
 - (d) Units which have a national bond rating of A1/A+ or higher OR NCMC rating of 85 or above..... 25 points
- (3) Ability to Pay (Maximum Value 100 points)
Based upon the median household income of the local government, all 100 counties will be divided into ten groups, based upon the median household income of the local government as listed by the U.S. Department of Housing and Urban Development, Office of Economic Affairs; municipalities are to be included in their county:
 - (a) Lowest100 points
 - (b) 90 points
 - (c) 80 points
 - (d) 70 points
 - (e) 60 points

- (f) 50 points
- (g) 40 points
- (h) 30 points
- (i) 20 points
- (j) Highest 10 points

- (4) Method of financing Solid Waste Management Program (Maximum Value 100 points)

Based upon local government implementation of user fees or average share charges to finance full cost of solid waste management programs:

- (a) Solid waste management supported by at least 75 percent from fees or special charges.....100 points
- (b) Solid waste management partially supported by at least 50 percent from fees or special charges..... 75 points
- (c) Solid waste management supported by at least 25 percent from fees or special charges..... 50 points
- (d) Solid waste management supported taxes or appropriations with plans for fees or special charges..... 25 points
- (5) Local Effort (Maximum Value 0 - 200 points)
 - (a) Project is an alternative to landfilling;
 - (b) Existing implementation of recycling and waste reduction by the unit of local government;
 - (c) Coverage and coordination within the service area of the applicant;
 - (d) Project is demographically appropriate multi-county undertaking;
 - (e) Project is consistent with a comprehensive approach to solid waste management by local government.
- (6) Installations to protect Public Health and the Environment (Maximum Value 0 - 50 points)
 - (a) Liners;
 - (b) Leachate collection and treatment;
 - (c) Monitoring wells;
 - (d) Air pollution control devices;
 - (e) Methane Control devices;
 - (f) Recycling facilities or equipment;
 - (g) Composting facilities or equipment;
 - (h) Other technology designed to protect the public health and the environment.
- (7) Public Health or Environmental Hazard (Maximum Value 50 points)
(Corrective action projects are ineligible for loans under this program.)
 - (a) Demonstrated hazard at existing facility which exposes the population .. 50 points
 - (b) Demonstrated hazard at existing facility which affects the environment.. 25 points

Statutory Authority G.S. 1591-11.

SECTION .1300 - DISPOSITION OF REMAINS OF TERMINATED PREGNANCIES

.1301 MANNER OF DISPOSITION OF REMAINS

(a) All facilities authorized to terminate pregnancies, and all medical or research laboratories or facilities to which the remains of terminated pregnancies are sent by facilities authorized to terminate pregnancies, shall dispose of the remains of terminated pregnancies by either:

- (1) burial;
- (2) cremation; or
- (3) incineration in accordance with 10 NCAC 10G .1200.

(b) The obligation to dispose of the remains of terminated pregnancies by a facility authorized to terminate pregnancies ceases as to any remains of terminated pregnancies that the facility has sent to a medical or research laboratory or facility.

Statutory Authority G. S. 130A-131.10.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Social Services intends to amend rule(s) cited as 10 NCAC 29B .0003; 29C .0002; 42C .2703; 42D .1407; 49B .0312; 49C .0101, .0302; repeal rule(s) cited as 10 NCAC 39A .0001 - .0003; 39C .0001 - .0005, .0007 - .0008, .0011; 49B .0311, .0313; 49D .0001 - .0003; and adopt rule(s) cited as 10 NCAC 39D .0108, .0201 - .0209, .0301 - .0303, .0401 - .0411; 49B .0314.

The proposed effective date of this action is October 1, 1990.

The public hearing will be conducted at 10:00 a.m. on June 6, 1990 at Disability Determination Building, 321 Chapanoke Road, Raleigh, N.C.

Comment Procedures: Interested persons may present their views and comments in writing before or at the hearing, or orally at the hearing. Time limits may be imposed as deemed necessary by the Commission Chairman. A fiscal note has been prepared. Any person may request information, or copies of the proposed regulations by writing or calling Donna A. Creech, Special Assistant, Social Services, 325 N. Salisbury St., Raleigh, NC 27611 (919) 733-3055.

CHAPTER 29 - INCOME MAINTENANCE: GENERAL

SUBCHAPTER 29B - LOW INCOME ENERGY ASSISTANCE PROGRAM

.0003 ELIGIBILITY REQUIREMENTS

~~To be eligible for the low income energy assistance program, a household must meet all the following requirements: A household must meet the following requirements to be eligible for the Low Income Energy Assistance Program:~~

- (1) ~~Income:~~ A household's income for the base period used to establish eligibility cannot exceed 110 percent of the current non-farm poverty level. Income will be defined as gross income less the standard medical deduction for household members with only unearned income; actual child care costs for any child in the household; and a standard deduction for work related expenses (a table shall be used to determine the appropriate amount to deduct). To compute income, all income will be counted with the exception of:
 - (a) Earned income of a child under 14 or under 20 if in school;
 - (b) Income of a child participating in Job Training Partnership Program;
 - (c) Income from incentive payments and training allowances from WIN funded training;
 - (d) Income for supportive services or reimbursement of out-of-pocket expenses to volunteers serving as foster grandparents, senior health aides or companions, SCORE, AGE or any other programs under Titles I, II, and III of PL 93-113;
 - (e) Foster Care payments equal to or below the state maximum rates to foster parents;
 - (f) In-kind contributions;
 - (g) Payments made directly to vendors on behalf of a household;
 - (h) Irregular earned income;
 - (i) Personal loans;
 - (j) Payments made under the Alaska Native Claims Settlement Act, PL 92-203;
 - (k) Payments to certain Indian tribes as permitted by PL 94-114;
 - (l) Child support being routed through the child support enforcement section and kept by them;
 - (m) That portion of educational loans, grants, or scholarships, including a payment under the GI Bill actually used for tuition, room, board, books, fees, equipment, special clothing needs, required school insurance and child care services necessary for school attendance;

- (n) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Secretary of Education under the Higher Education Act;
- (o) Assistance from other agencies and organizations if such aid is for rehabilitation purposes, special training or educational opportunities and provided no duplication exists;
- (p) Incentive payments made to an applicant or recipient participating in a vocational rehabilitation program as long as a training plan is in effect;
- (q) Weekly incentive payments made by the manpower agency to any participant in institutional and work experience training under the WIN program;
- (r) Housing improvement grants to low-income families approved by the North Carolina Commission of Indian Affairs or any funds distributed per capita to or held in trusts for members of any Indian tribe under P.L. 92-254, P.L. 93-134, or P.L. 94-540;
- (s) Experimental housing allowance program payments made under annual contributions contracts entered into prior to January 1, 1975 under Section 23 of the U.S. Housing Act of 1937, as amended;
- (t) Title XX of the Social Security Act and State In-Home funds received to pay for services rendered by another individual or agency;
- (u) Disaster assistance;
- (v) HUD community development block grant funds received to finance the renovation of a privately owned residence;
- (w) Money paid to attendant or chore provider;
- (x) All federally mandated exclusions;
- (y) Child support AFDC disregard check;
- (z) Any HUD payment paid to or on behalf of an applicant;
- (aa) The value of the Food Stamp Coupon allotment;
- (bb) The value of USDA donated foods (surplus commodities);
- (cc) Relocation payments provided under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (dd) Benefits received under Title VII, Nutrition Program for the Elderly Older Americans Act, Older American Community Service Programs, Foster Grandparents Program, Service Corps of Retired Executives (SCORE), and Active Corps of Executives (ACE);
- (ee) The value of supplemental food assistance received under the Child Nutrition Act and the special food service program for children under the National School Lunch Act;
- (ff) Payments distributed pursuant to any judgment of the Indian Claims Commission of the Court of Claims in favor of any Indian Tribe;
- (gg) Assistance to prevent fuel cutoffs and to promote energy efficiency under the Emergency Energy Conservation Services Program or the Energy Crisis Assistance Program as authorized by the Economic Opportunity Act of 1964, as amended;
- (hh) Any wages, allowances, or reimbursement for transportation and attendant care costs, unless excepted on a case-by-case basis, when received by an eligible handicapped individual employed in a project under Title VI of the Rehabilitation Act of 1973, as amended;
- (ii) Any penalty payments paid to applicants for delayed AFDC or Medicaid applications as referenced by *Alexander v. Hill*;
- (jj) Allowance paid to CWEP participants;
- (kk) Prorata share of an ineligible alien's income. Prorata share is determined by dividing the gross income of the ineligible alien by the number of people in the household.
- (2) Assets: A household must have assets not to exceed two thousand, two hundred dollars (\$2,200). All assets will be counted with the exception of:
 - (a) Household or personal belongings (includes essential and non-essential personal property);
 - (b) Cars;
 - (c) Primary residence (including mobile home) and all contiguous property;
 - (d) Income producing real property;
 - (e) Insurance (including burial, term and whole life cash values);
 - (f) Value of prepaid burial contracts;
 - (g) Value of burial plots;
 - (h) Savings of a student under age 18 who is saving his money for school expenses;
 - (i) Relocation assistance payments;
 - (j) That portion of monthly income deposited in a checking account to meet monthly needs;
 - (k) Non-salable life estate or remainder interests;
 - (l) Heir property;

- (m) HUD community development block grants;
- (n) Any of a lump sum payment for the month received or the following month.
- (3) Vulnerability: A household must be vulnerable to rising costs of energy. A household that is vulnerable to energy cost increases is one that is not protected against such increases under any other program.
- (4) Citizenship: Individuals who are illegal aliens are not eligible for the Low Income Energy Assistance Program.

Statutory Authority G.S. 108A-25; 143B-153.

SUBCHAPTER 29C - CRISIS INTERVENTION PROGRAM

.0002 ELIGIBILITY REQUIREMENTS

~~To be eligible for the crisis intervention program, a household must meet all of the following requirements: A household must meet the following requirements to be eligible for the Crisis Intervention Program.~~

- (1) Income: A household must have income at or below 110 percent of the current non-farm poverty income guidelines. The rules in 10 NCAC 29B .0003 will govern for the definition and computation of income.
- (2) Crisis: A household must be in a heating or cooling related crisis. A household is in a crisis if it is experiencing or is in danger of experiencing a life threatening or health-related emergency and sufficient, timely and appropriate assistance is not available from any other source.
- (3) Citizenship: Individuals who are illegal aliens are not eligible for the Crisis Intervention Program.

Statutory Authority G.S. 143B-153; 150B-13.

CHAPTER 39 - EMPLOYMENT PROGRAMS

SUBCHAPTER 39A - IDENTIFYING INFORMATION: MANUAL (REPEALED)

- .0001 ADDRESS AND HOURS
- .0002 PURPOSE
- .0003 MANUAL

Statutory Authority G.S. 108A-30; 42 U.S.C. Sec. 301 et seq.

SUBCHAPTER 39C - COMMUNITY WORK EXPERIENCE PROGRAM

- .0001 PURPOSE (REPEALED)
- .0002 PARTICIPATING COUNTIES (REPEALED)

- .0003 PARTICIPATION EXEMPTIONS (REPEALED)
- .0004 REFERRAL TO PUBLIC AND PRIVATE NON-PROFIT WORK SITES (REPEALED)
- .0005 TEMPORARY EXCUSE FROM PARTICIPATION (REPEALED)

Statutory Authority G.S. 108A-29; 143B-153; 42 U.S.C. 609 et seq.; S.L. 1981, c. 1282.

- .0007 PROGRAM PARTICIPATION (REPEALED)
- .0008 NOTICE TO PARTICIPANTS OF TRAINING AND WORK OPPORTUNITIES (REPEALED)

Statutory Authority G.S. 143B-153; S.L. 1981, c. 1282.

- .0011 GRIEVANCE PROCEDURES (REPEALED)

Statutory Authority G.S. 143B-153; S.L. 1981, c. 1282.

SUBCHAPTER 39D - JOBS OPPORTUNITIES AND BASIC SKILLS TRAINING (JOBS) PROGRAM

SECTION .0100 - ADMINISTRATION

.0108 CONCENTRATION OF JOBS CASE MANAGEMENT RESPONSIBILITIES

(a) JOBS case management means a method through which the JOBS participant and county department of social services jointly identify the participant's capacity for self-sufficiency. The case management method utilizes social work methodology and practice.

(b) Case management responsibilities for JOBS participants shall be concentrated with separate staff who perform only JOBS program case management.

(c) JOBS case management activities include, but are not limited to, the following:

- (1) assessment;
- (2) development of an employability plan;
- (3) arranging for or providing supportive services; and
- (4) helping participants access community resources.

(d) Notwithstanding Paragraph (b) of this Rule, in counties where the number of JOBS participants does not constitute a full workload, the county department of social services can make alternate assignments based on a plan approved by the Division of Social Services.

(e) Counties wanting to test alternate methods for carrying out JOBS Program case management may do so as a demonstration project that is approved by the Division of Social Services.

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

SECTION .0200 - JOBS PARTICIPATION

.0201 PARTICIPATION OF UNEMPLOYED PARENT IN EDUCATION

A parent in any family eligible for AFDC by reason of the unemployment of the parent who is the principle wage earner, who is a JOBS participant, is under age 25, and has not earned a high school diploma or its equivalent, shall participate in education activities in lieu of the work requirement provided that:

- (1) The determination of the appropriateness of education is made by an assessment of the individual's educational needs;
- (2) Participation in education is appropriate to the individual's employment goal; and
- (3) Community educational resources are available to meet the participant's needs.

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

.0202 CONCILIATION PROCEDURE

(a) Each county department of social services shall establish a written conciliation procedure allowing participants and staff responsible for JOBS case management to appeal and resolve disputes affecting program participation, including but not limited to provision of supportive services and work experience placement conditions. The procedure shall include an opportunity for a meeting between the participant and JOBS staff for the purpose of resolving the dispute. If the dispute is not resolved, the procedure shall include an opportunity for an informal hearing conducted by the county director or his designee.

(b) The county department of social services shall begin the conciliation process within seven calendar days after a participant or staff responsible for JOBS case management asks for conciliation. The conciliation process shall not extend beyond 30 calendar days after the date of the initial request for conciliation.

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

.0203 ASSIGNMENT OF 16 AND 17 YEAR OLD CUSTODIAL PARENTS

A custodial parent, age 16 or 17, who has not received a high school diploma, or its equivalent, and is required to participate in the JOBS Program, shall be excused from attending high school, when determined appropriate by an assessment of the individual's educational needs, provided that:

- (1) the participant is enrolled full-time in an educational activity as defined in 45 CFR 250.44(a); or
- (2) the participant is enrolled in skills training as defined in 45 CFR 250.44(b)(9)(ii) that is combined with education as defined in 45 CFR 250.44(a).

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

.0204 ASSIGNMENT OF 18 AND 19 YEAR OLD CUSTODIAL PARENTS

A custodial parent, age 18 or 19, who has not earned a high school diploma, or its equivalent, and is required to participate in the JOBS Program, shall be assigned to training or other JOBS activities in lieu of education when the educational assessment shows that community educational resources are not available to meet the participant's needs.

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

.0205 ASSIGNMENT OF PARTICIPANTS 20 YEARS OF AGE OR OLDER

A JOBS participant, who has attained the age of 20 years or older and has not earned a high school diploma or its equivalent, shall not be required to participate in an educational activity if:

- (1) The participant demonstrates a basic literacy level as defined in 45 CFR 250.1; or
- (2) The participant's long term employment goal does not require a high school diploma; or
- (3) Community educational resources are not available to meet the participant's needs.

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

.0206 SATISFACTORY PROGRESS IN AN EDUCATIONAL COMPONENT

(a) Satisfactory progress in an educational component approved by the county department of social services shall be measured according to the attendance and academic progress policies of the educational institution in which the participant is enrolled.

(b) Satisfactory progress in literacy training or remedial assistance offered by non-institutional providers shall be measured by attendance of at least 75 percent of the monthly hours scheduled.

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

.0207 CONTINUATION IN PROGRAM COMPONENTS AFTER AFDC TERMINATION

Program participants may continue in JOBS component activities and receive supportive ser-

vices for the duration of the period for which funds have been obligated or expended. The funds must be obligated or expended before the individual loses eligibility for AFDC.

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

.0208 PROVISION OF CASE MANAGEMENT AND SUPPORTIVE SERVICES

Case management, transportation, and supportive services shall be available to JOBS Program participants for up to the maximum time allowable, as specified in 45 CFR 250.73(e), after termination from AFDC due to employment.

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

.0209 CRITERIA FOR SELF-INITIATED EDUCATION OR TRAINING

Self-initiated education and training are defined in 45 CFR 250.48(a). Additional criteria for determining when self-initiated education and training are appropriate for JOBS participants shall be the following:

- (1) A participant enrolled in an institution of higher education has earned a high school diploma or its equivalent;
- (2) A participant enrolled in a course of vocational or technical training has earned a high school diploma or its equivalent unless the individual's employment goal does not require a high school diploma.

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

SECTION .0300 - JOBS PROGRAM COMPONENTS AND ACTIVITIES

.0301 JOBS COMPONENT EXPENSES

(a) Expenses required for participation in the following components, when the component is identified in a participant's employability plan, shall be paid by the JOBS Program when otherwise not available:

- (1) Education as defined in 45 CFR 250.44(a);
- (2) Job skills training as defined in 45 CFR 250.44(b);
- (3) Job readiness as defined in 45 CFR 250.44(c);
- (4) Job search as defined in 45 CFR 250.60;
- (5) On-the-job training as defined in 45 CFR 250.61;
- (6) Work experience as defined in 45 CFR 250.63;
- (7) Post-secondary education as defined in 45 CFR 250.1 and 45 CFR 250.46.

(b) Allowable expenses include, but are not limited to, fees, books, supplies, tuition, tools, uniforms, shoes, and medical exams.

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

.0302 WORK EXPERIENCE

(a) Work experience participation shall not exceed nine months during any period of AFDC eligibility.

(b) A participant who is a parent in any family eligible for AFDC by reason of the unemployment of the parent who is the principle wage earner shall not be subject to the time limitations described in Paragraph (a) of this Rule.

(c) A JOBS participant may volunteer to participate in work experience for more than the maximum number of hours as defined in 45 CFR 250.63.

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

.0303 POST-SECONDARY EDUCATION

(a) The criteria for determining when post-secondary education, as defined in 45 CFR 250.1 and 45 CFR 250.46, is appropriate for JOBS participants shall be:

- (1) A participant has earned a high school diploma or its equivalent;
- (2) The program of study offered at the post-secondary institution is directly related to the participant's employment goal as defined in the JOBS employability plan; and
- (3) The determination of appropriateness is made by an educational assessment.

(b) Payment for tuition and fees shall be no more than the tuition and fee rates for the local or regional state-supported institution.

Authority G.S. 143B-153; 42 U.S.C. 682 et seq..

SECTION .0400 - SUPPORTIVE SERVICES

.0401 SUPPORTIVE SERVICES TO BE AVAILABLE IN JOBS COUNTIES

Based on fund availability and service availability, the following services, as defined in this Section, shall be available when necessary to support a JOBS participant's employment plan:

- (1) Health Support Services;
- (2) Employment and Training Support Services;
- (3) In-Home Services;
- (4) Transportation;
- (5) Personal and Family Counseling;
- (6) Individual and Family Adjustment;
- (7) Day Care Services for Adults;
- (8) Child Care Transportation;
- (9) Participation Expenses.

Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

.0402 HEALTH SUPPORT SERVICES

Health support services means helping JOBS participants to obtain medical services as needed to enable them to participate in JOBS activities as specified in the participant's employability plan. Services will also be available to the participant's family members if needed to support the participant's employment plan. Services include helping individuals and families to recognize health needs, including those related to alcohol and drug abuse; to cope with incapacities and limited functioning resulting from aging, disability, or handicap and to choose, obtain and use resources of maternal and child health programs, referral to preventive health care services for children such as Healthy Children and Teens, and other public or private agencies or providers of health services; counseling and planning, as appropriate, with individuals, families, and health providers to help assure continuity of treatment and the carrying out of health recommendations; and helping individuals to secure admission to medical institutions and other health-related facilities as needed; and helping individuals access family planning services.

Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

.0403 EMPLOYMENT AND TRAINING SUPPORT SERVICES

Employment and training support services are services provided as part of an employability plan to enable a JOBS participant to secure paid employment or training leading to employment, including basic education and continuing education. Services include counseling to explore with the individual his current readiness or potential for employment and to assess the feasibility of seeking education, training or employment in relation to the total needs of the family; providing information about and referral to educational resources, training programs, and possible sources of employment; and counseling and information to encourage and support the individual's employment objectives with respect to such topics as grooming, how to access appropriate resources, understanding employer expectations and constructive resolution of work related problems. Also included is arrangement for or provision of general and specialized diagnostic tests and evaluations to assess the individual's potential for employment and any limitations which affect employment, education, or training.

Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

.0404 IN-HOME SERVICES

Chore and homemaker services are provided to JOBS participants and their family members when needed to support the participant's employability plan:

- (1) Chore services means the provision of care for persons or assistance to persons by performing home management or personal care tasks that are essential to the activities of daily living. Such tasks are performed to enable individuals to remain in their own homes when they are unable to carry out these activities for themselves and where no responsible person is available for these tasks. Chore services are provided under professional direction and only by persons who have received training for the proper performance of such tasks. Professional direction means guidance and supervision in implementing a plan of care based on individual assessment of a person's health status and particular care needs. Home management includes tasks related to maintaining the home, shopping for and preparing meals and providing essential transportation for the client. Personal care includes tasks related to physical care and feeding of clients. The specific tasks that may be performed are defined according to level of the task, supervision required and training required.
- (2) Homemaker services are supportive services provided by qualified paraprofessionals who are trained, equipped, assigned, and supervised by the county department of social services agency to help maintain, strengthen, and safeguard the care of children and the aging and the functioning of dependent, physically or emotionally ill or handicapped children and adults in their own homes. Such services must meet standards set by the North Carolina Department of Human Resources, Division of Social Services, which are based on standards of the National Homecare Council, Inc. These services include providing assistance in management of household budgets, planning nutritious meals, purchasing and preparing foods and help with housekeeping duties and basic personal and health care. Also included are help and instruction to families and individuals in managing to live within a public assistance or other limited budget and in consumer education generally.

Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

.0405 TRANSPORTATION SERVICES

Transportation services mean arranging for, providing or purchasing transportation as part of an employability plan to enable JOBS participants for whom transportation is not otherwise available to have access to medical and health resources, education, employment and training opportunities, and other community facilities and resources, and to support the delivery of other social services when necessary and proper to carry out the individual's employability plan as defined in 45 CFR 250.41.

Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

.0406 CHILD CARE TRANSPORTATION

Transportation to support child care means transportation to enable a child to participate in child care services when necessary to facilitate the participation of the JOBS participant in approved JOBS activities in support of his employment goal. The reimbursement rate shall not exceed the payment rate established in 10 NCAC 46C .0106.

Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

.0407 PERSONAL AND FAMILY COUNSELING

Personal and family counseling means the rendering of counseling services or therapy to JOBS participants and their families either singly or in groups, for the purpose of resolving emotional conflicts within social relationships and to enable the participant to reach his employment goal. It operates through a process of mobilizing the strengths inherent in the person which are needed to deal with immediate situations and developing the coping ability of the participant to use himself effectively in life roles and tasks. The process involves a professional relationship with a skilled counselor to help the clients to assess the situation to plan steps for dealing with it, and to take appropriate action. Personal and family counseling is provided when necessary and proper to carry out the individual's employability plan as defined in 45 CFR 250.41.

Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

**.0408 INDIVIDUAL AND FAMILY
ADJUSTMENT SERVICES**

Individual and family adjustment services are designed to offer assistance to JOBS participants and their family members to support participants in education, training, or employment activities.

Services are provided when necessary and proper to carry out an individual's employability plan as defined in 45 CFR 250.41. Services include counseling to enable the JOBS participant to recognize, understand, and cope with problems and conflicts that may create an obstacle in reaching his employment goal. Problems which are to be addressed include, but are not limited to such areas as household management, consumer affairs, family life, alcoholism, drug addiction, mental retardation, emotional disturbance, and school related problems. Such counseling is also designed to help individuals independently utilize community resources, including other social services; take advantage of natural support systems; and achieve an adequate level of functioning within the family. Also included is arranging for other services when needed to support the provision of individual and family adjustment services; diagnostic psychological study and evaluation necessary to determine the appropriate plan of service; and social development through the therapeutic groups as a part of a service plan to give individuals opportunities for participation in structured group activities focused on helping them cope with personal problems, develop capacities for more adequate social functioning and relieve social isolation.

Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

.0409 PARTICIPATION EXPENSES

Payment of expenses for JOBS participants are allowable when needed to facilitate participation in approved education or training activities or both, not to exceed five hundred dollars (\$500.00) per 12 month period unless approval to exceed that amount is granted by the director of the county department of social services. Expenses may include, but are not limited to, car repairs, licensing fees, medical and dental services, when otherwise not available.

Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

.0410 ONE-TIME WORK RELATED EXPENSES

Payment of expenses are allowable when needed, as determined by an individual assessment, to allow AFDC applicants and recipients in JOBS counties to accept or maintain employment, not to exceed five hundred dollars (\$500.00) per 12 month period unless approval to exceed that amount is granted by the director of the county department of social services. Expenses may include but are not limited to tools,

uniforms, car repairs and insurance, licensing fees, medical and dental services not otherwise available, and relocation costs.

Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

.0411 DAY CARE SERVICES FOR ADULTS

Day care services for adults is the provision of an organized program of services during the day in a community group setting for the purpose of supporting adults' personal independence, promoting their social, physical, and emotional well-being and to enable a JOBS participant, when his presence otherwise would be required in the home to care for the adult family member, to participate in JOBS activities identified in the employability plan. Services must include a variety of program activities designed to meet the individual needs and interests of the participants, and referral to and assistance in using appropriate community resources. Also included are medical examinations required for individual participants for admission to day care and periodically thereafter when not otherwise available without cost, food and food services to provide a nutritional meal and snacks as appropriate to the program, and transportation to and from the service facility when needed and not otherwise available. Services must be provided in a home or center certified to meet state standards for such programs.

Authority G.S. 143B-153; 42 U.S.C. 602(g); 42 U.S.C. 682(a)(2).

CHAPTER 42 - INDIVIDUAL AND FAMILY SUPPORT

SUBCHAPTER 42C - LICENSING OF FAMILY CARE HOMES

SECTION .2700 - MEDICAL POLICIES

.2703 MANAGEMENT OF DRUGS

The administrator is responsible for establishing and implementing procedures for the use of drugs by residents in the home that are in accordance with the requirements presented in this Section. The administrator must consult with a pharmacist, physician, public health nurse, or other registered nurse in establishing these procedures.

- (1) Definitions. To assure uniform understanding of these requirements, definitions in the North Carolina Pharmacy Practice Act, General Statute 90-85.3, effective July 1, 1982, shall apply.
- (2) Dispensing of Drugs.

- (a) Drugs are to be obtained only on the written order or prescription of a practitioner licensed by law to prescribe drugs in this state;
 - (b) These signed practitioner's orders must be maintained in the facility;
 - (c) Verbal orders must be countersigned by the prescriber;
 - (d) Dispensing of drugs is restricted to registered pharmacists or other health care practitioners that are approved by the North Carolina Board of Pharmacy. Repackaging of medications, such as for temporary leave, is an act of dispensing; ~~and~~
 - (e) The administrator must arrange for emergency pharmaceutical services; and
 - (f) Domiciliary homes shall not be permitted to possess a stock of prescription legend drugs for general or common use.
- (3) Labeling of Drugs.
- (a) Non-prescription drugs must bear the manufacturer's label with expiration dates clearly visible;
 - (b) The container label of each prescription drug must include the following information:
 - (i) the resident identified clearly by name;
 - (ii) the name of the prescribing practitioner;
 - (iii) the most recent date of issuance;
 - (iv) the directions for use clearly stated and not abbreviated. When the prescriber's directions change or the label becomes illegible, the container must be relabeled;
 - (v) the serial number of a prescription;
 - (vi) the name of the drug as prescribed. If generic equivalent drugs are dispensed, the generic name is to appear on the label;
 - (vii) the strength of the drug;
 - (viii) the quantity of the drug;
 - (ix) the name, address, and telephone number of the pharmacy;
 - (x) the name of the dispensing practitioner; and
 - (xi) the expiration date ~~of time dated drugs~~ and ~~any other auxiliary statements that are necessary.~~ as required of the drug and as determined by the pharmacist.
- (4) Administration of Drugs.
- (a) Drugs, including both prescription and non-prescription drugs, shall not be administered to any resident unless prior authorization has been obtained from a ~~practitioner licensed~~ person authorized by law to prescribe drugs in the State. Drugs shall be administered as prescribed.
 - (b) The administrator must assure that only persons authorized in writing by a physi-

- cian, ~~or local health department~~ registered nurse, family nurse practitioner, or physician's assistant give injections. Registered nurses and licensed practical nurses are authorized to give injections in accordance with the provisions of the Nursing Practice Act and no further authorization is required.
- (c) Specific directions for the quantity to be administered, frequency of use, duration of therapy, and route of administration must be clearly indicated by the prescriber for all drugs to be administered. These orders are to be on or attached to the FL-2 or MR-2 upon entering the home, or the DSS-1867 or the equivalent for subsequent orders.
- (d) Drugs shall be self-administered only when ordered by the resident's physician.
- (e) When self-administration has not been ordered, otherwise, the drugs are to be given to the resident by the administrator or other staff who are designated and determined by the administrator to be capable of and appropriately trained. The administrator will determine staff capable of preparing and administering drugs. Staff designated to prepare and administer drugs will be trained by the administrator or other experienced staff. Training materials will consist of the rules contained in 10 NCAC 42C .2703 and the home's procedures for the use of drugs by residents. Designated staff in training will be observed by the administrator or other experienced staff while preparing and administering drugs until the staff in training has demonstrated, by performance, capability in these specific assigned tasks. The responsibility for the administration of drugs to residents by ~~designated staff~~ the home must be delegated by a licensed physician, a licensed dentist or a registered nurse.
- (f) ~~(e)~~ The designated staff person giving the drug must observe the resident actually taking the drug and must follow any laws and regulations governing such acts.
- (g) ~~(f)~~ Recording of any administration must promptly follow the direct application of the ~~drug(s)~~ drug to the body of the resident by injection, inhalation, ingestion, or other means. Precharting is prohibited.
- (h) ~~(g)~~ A record of all drugs given to each resident must be kept indicating each dose given and is to include the following:
- (i) resident's name;
 - (ii) name, strength, and quantity of the drug;
 - (iii) instructions for giving drug;
 - (iv) date and time drug is administered; and
 - (v) name or initials of ~~person(s)~~ person giving the drug. If initials are used, a signature equivalent to those initials is to be entered on this record;
- (i) ~~(h)~~ Drug administration errors and drug reactions must be reported immediately to the practitioner who ordered the drug. An entry of the drug given ~~and/or~~ and the drug reaction must be properly recorded in the drug record. A resident's refusal of a drug must be charted.
- (j) ~~(i)~~ Oral solid drugs that are ordered for routine administration must be prepared for administration within 24 hours of the prescribed time for administration. The administrator must designate appropriately trained staff to be responsible for preparing the drugs for administration. PRN (as needed) drugs are not to be prepared in advance.
- (k) ~~(j)~~ If drugs are prepared for administration in advance, the following procedures must be used to keep the drugs identified up to the point of administration and protect them from contamination and spillage:
- (i) All drugs prepared for subsequent administration are to be kept enclosed in a sealed or capped container until administered. A separate container is to be used for each resident and each planned administration of the drugs;
 - (ii) The container is to be labeled with the resident's name;
 - (iii) All containers for a single planned administration are to be placed together on a separate tray or other device that keeps each planned administration separate;
 - (iv) Each tray or other device is to be labeled clearly indicating the planned time for administration;
 - (v) Trays or other devices are to be locked in the separate drug storage cabinet or closet to which only authorized persons have access; and
- (l) ~~(k)~~ Liquid drugs must be poured immediately before administration.
- (5) Review of Drugs. The administrator is responsible for obtaining a ~~drug regimen~~ review of each resident's drug regimen at least every six months. A resident's drug regimen is all drugs, both prescription and non-prescription, PRN and routine, which the resident has been taking. It also includes vitamins and nutritional supplements. The

main purpose of the drug regimen review is to ensure that the resident's use of drugs is rational. The review also is to determine whether the home is complying with the orders of the resident's physician regarding the management of drugs. The review is to be performed by a pharmacist, physician, public health nurse, or other registered nurse. The administrator must assure that ~~he~~ the resident's physician is informed of the results of the review when medical intervention is indicated. The Form FL-2, MR-2, Form DSS-1867 or the equivalent is to be maintained by the facility to record these findings, recommendations and corrective action.

- (6) Storage of Drugs. For requirements on storage of drugs, see Rule .2207 of this Subchapter.
- (7) Disposing of Drugs.
 - (a) When a resident leaves the home, his drugs are to be given to him, his family, ~~or~~ the person responsible for making the placement or returned to a registered pharmacist; and
 - (b) If drugs are discontinued or outdated, or upon the death of a resident, his drugs must be returned to an approved dispensing practitioner or registered pharmacist licensed to practice in this state for documented destruction according to current federal and state laws, with corresponding records maintained by the administrator.

Statutory Authority G.S. 131D-2; 143B-153.

SUBCHAPTER 42D - LICENSING OF HOMES FOR THE AGED AND INFIRM

SECTION .1400 - PERSONNEL

.1407 STAFFING

(a) In addition to the requirements set forth in Paragraphs (b) through (d) of this Rule, the requirements in 10 NCAC 42C .2005 shall control for this Subchapter.

(b) Homes must staff to the licensed capacity of the home or to the resident census. When a home is staffing to resident census, a daily census log must be maintained which lists current residents by name, room assignment and date of admission and must be available for review by the monitoring and licensing agencies.

(c) ~~(b)~~ Homes with capacity or census of 7-12-12 or fewer residents.

- (1) At all times there must be an administrator or supervisor-in-charge in the home or within 500 feet of the home and immediately available;

- (2) A free standing home with capacity or census of 7-12-12 or fewer residents must comply with the following staffing:

(A) When the administrator or supervisor-in-charge is not on duty within the home, there must be at least one staff member on duty on the first and second shifts and at least one staff member on call within the building on third shift. There must be a call system connecting the bedroom of the staff member, who may be asleep on the third shift, with each resident's bedroom; and

(B) When the administrator or supervisor-in-charge is on duty within the home on the first and second shifts and on call within the home on the third shift, another staff member (i.e., co-administrator, supervisor-in-charge or aide) must be in the building or within 500 feet of the home and immediately available.

- (3) A cluster of homes with capacity or census of 7-12-12 or fewer residents must comply with the following staffing:

(A) When there is a cluster of up to six licensed homes located adjacently, there must be at least one administrator or supervisor-in-charge who lives within 500 feet of each of the homes, is immediately available, and who, as supervisor for all the homes, is directly responsible for assuring that all required duties are carried out in each home; and

(B) In each of the homes, at least one staff member must be on duty on the first and second shifts and at least one staff member must be on call within the building during the third shift. There must be a call system connecting the bedroom of the staff member, who may be asleep on the third shift, with each resident's bedroom.

- (4) The following shall apply to all homes with capacity or census of 7-12-12 or fewer residents:

(A) The administrator must prepare a plan of operation for the home (each home in a cluster) specifying the staff involved, their regularly assigned duties and the amount of time estimated to be spent for each duty. There must be a current plan of operation on file in the home, available for review by bona fide inspectors and the monitoring and licensing agencies;

(B) At least 12 hours must be spent daily providing for the personal services, health services, drug management, meaningful activities, and other direct services needed by the residents. These activities are the

primary responsibility of the staff member(s) on duty on the first and second shifts; however, other help, such as the supervisor-in-charge and activities coordinator may be used to assist in providing these services;

- (C) During the remaining hours, the staff member on duty may perform housekeeping and food service duties as long as the staff member can respond immediately to resident calls or the residents are otherwise supervised. Also, the person on call within the home may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. if the duties do not hinder care of residents or immediate response to resident calls, do not disrupt residents' normal lifestyles and sleeping patterns; and do not take the person on call out of view of where the residents are;

- (D) Additional help must be available daily to assure adequate housekeeping and food service.

(d) ~~(e)~~ Homes with capacity or census of 13-20 must comply with the following staffing.

Note: When the home is staffing to census and the census falls below 13 residents, the staffing requirements for a home with 12 or fewer residents will apply.

- (1) At all times there must be an administrator or supervisor-in-charge in the home or within 500 feet of the home and immediately available;
- (2) When the administrator or supervisor-in-charge is not on duty within the home, there must be at least one staff member on duty on the first, second and third shifts. Since the staff member on the third shift is on duty, there is no required call system for use by the residents;
- (3) When the administrator or supervisor-in-charge is on duty within the home, another staff member (i.e. co-administrator, supervisor-in-charge or aide) must be in the building or within 500 feet of the home and immediately available;
- (4) The job responsibility of the staff member on duty within the home is to provide the direct personal assistance and supervision needed by the residents. Any housekeeping duties performed by the staff member between the hours of 7 a.m. and 9 p.m. are to be limited to occasional, non-routine tasks. The staff member may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. as long as such duties do not hinder care of residents or immediate response to resident calls, do

not disrupt residents' normal lifestyles and sleeping patterns and do not take the staff member out of view of where the residents are. The staff member on duty to attend to the residents is not to be assigned food service duties; and

- (5) In addition to the staff member(s) on duty to attend to the residents, there must be sufficient help available daily to perform necessary housekeeping and food service duties.

~~(e)~~ (d) Homes with capacity or census of 21 or more must comply with the following staffing.

Note: When the home is staffing to census and the census falls below 21 residents, the staffing requirements for a home with a census of 13-20 will apply.

- (1) At all times there must be an administrator or supervisor-in-charge in the home or within 500 feet of the home and immediately available;
- (2) While the Division of Facility Services may require a home to have additional aide duty in excess of the minimum (based on the condition of the residents and the layout of the building), the daily total of aide duty hours on each 8-hour shift must at all times (other than during short, unforeseeable circumstances) be at least:
 - (A) First shift (morning) - 0.4 hours of aide duty for each resident (licensed capacity or resident census), or 8.0 hours per each 20 residents plus 3.0 hours for all other residents, whichever is greater; and
 - (B) Second shift (afternoon) - 0.4 hours of aide duty for each resident (licensed capacity or resident census), or 8.0 hours per each 20 residents plus 3.0 for all other residents, whichever is greater; and
 - (C) Third shift (evening) - 8.0 hours of aide duty per 50 or fewer residents (licensed capacity or resident census).
- (3) The following describes the nature of the aide's duties, including allowances and limitations:
 - (A) The job responsibility of the aide is to provide the direct personal assistance and supervision needed by the residents;
 - (B) Any housekeeping performed by an aide between the hours of 7 a.m. and 9 p.m. is to be limited to occasional, non-routine tasks, such as wiping up a water spill to prevent an accident, attending to an individual resident's soiling of his bed, or helping a resident make his bed;
 - (C) If the home employs more than the minimum number of aides required, any additional hours of aide duty above the

required hours of direct service between 7 a.m. and 9 p.m. may involve the performance of housekeeping tasks;

(D) An aide may perform housekeeping duties between the hours of 9 p.m. and 7 a.m. as long as such duties do not hinder the aide's care of residents or immediate response to resident calls, do not disrupt the residents' normal lifestyles and sleeping patterns, and do not take the aide out of view of where the residents are. The aide must be prepared to care for the residents since that remains his primary duty; and

(E) Aides are not to be assigned food service duties, however, providing assistance to individual residents who need help with eating is an appropriate aide duty.

(4) In addition to the staffing required for management and aide duties, there must be sufficient personnel employed to perform necessary housekeeping and food service duties.

Statutory Authority G.S. 131D-2; 143B-153.

CHAPTER 49 - AFDC

SUBCHAPTER 49B - ELIGIBILITY DETERMINATION

SECTION .0300 - ELIGIBILITY FACTORS

.0311 WORK INCENTIVE PROGRAM (WIN) (REPEALED)

Authority G.S. 108A-29; 143B-153; 45 C.F.R. 233.10; 45 C.F.R. 233.20.

.0312 STATE WORK REQUIREMENT

(a) An AFDC ~~applicant recipient~~ applicant or recipient who is not exempt, or who is exempt but volunteers, must register with the nearest Employment Security Commission office. A non-exempt applicant/recipient must present his registration card as proof of registration at application and at each review.

(b) Exemptions for state work registration shall be found in ~~45 C.F.R. 221.20~~ 45 C.F.R. 250.30 and this provision is hereby adopted by reference under G.S. 150B-14(c).

(c) Any claim of exemption must be verified within 45 days from the date of application or 30 days from a change in situation or redetermination. Verification will be accomplished by necessary collateral contacts and information contained in the case record.

(d) A non-exempt ~~applicant recipient~~ applicant or recipient who refuses to register for work is

ineligible for assistance until he registers or becomes exempt.

(e) ~~The first time a registrant, without good cause, refuses to participate, terminates or refuses to accept employment or reduces earnings, the registrant becomes ineligible for AFDC for three calendar months. Any subsequent refusal, termination or reduction without good cause by the registrant results in his ineligibility for AFDC for six calendar months. Sanctions for failing to participate, refusing to accept employment, terminating employment, or reducing earnings without good cause shall be found in 45 C.F.R. 250.34 and this provision is hereby adopted by reference under G.S. 150B-14(c).~~

(f) Good Cause. Based upon evidence provided by the ~~applicant recipient~~ applicant or recipient, the county director or his designee must determine good cause for refusing to participate, terminating employment, refusing to accept employment or reducing earnings. Good cause is defined as:

- (1) a court appearance;
- (2) an illness which can be substantiated by a doctor's statement;
- (3) a family crisis or a change, including but not limited to death of a spouse, parent, or child; participation in a drug or alcohol rehabilitation program;
- (4) a breakdown in transportation arrangements with no readily available alternate means of transportation;
- (5) a breakdown in the child care arrangement;
- (6) an assignment or job referral that does not meet the criteria for reasonable employment -- that is hours and salary comparable to those in community, work is suitable to person's skills, and is not hazardous;
- (7) weather that is bad enough to keep the registrant, and other persons similarly situated, from traveling to, or participating in the required activity;
- (8) the ~~applicant recipient~~ applicant or recipient is employed already;
- (9) a job referral when employment related services are not in place;
- (10) refusal to accept major medical services ~~and/or social services~~ even when such refusal prevents participation in the program;
- (11) available child care is not suited to the special needs of the child for whom it is intended;
- (12) any other reason determined by the county director or his designee.

Authority G.S. 108A-29; 143B-153; 45 C.F.R. 233.10; 45 C.F.R. 233.20; 45 C.F.R. 250.30; 45 C.F.R. 250.34.

.0313 COMMUNITY WORK EXPERIENCE PROGRAM (CWEP) (REPEALED)

Authority G.S. 143B-153; 45 C.F.R. 238.

.0314 JOBS PROGRAM (JOBS)

(a) An AFDC applicant or recipient who is not exempt, or who is exempt but volunteers and lives in a county participating in JOBS must participate in the Program.

(b) Exemptions are mandated in 45 CFR 250.30, which is hereby adopted by reference under G.S. 150B-14(c).

(c) Based upon evidence provided by the applicant or recipient, the county director or his designee must determine good cause for refusing to participate, terminating employment, refusing to accept employment or reducing earnings. Good cause definitions found in 10 NCAC 49B .0312(f) shall apply.

Authority G.S. 143B-153; 45 C.F.R. 250.30.

SUBCHAPTER 49C - EMERGENCY ASSISTANCE

SECTION .0100 - COVERAGE

.0101 ELIGIBILITY FOR COVERAGE

(a) Eligibility for coverage will be as follows:

- (1) Emergency Assistance shall be provided to or on behalf of a needy ~~child(ren)~~ children under the age of 21, the specified relative of the needy ~~child(ren)~~ children, the spouse of the specified relative and all other individuals sharing the same single unit dwelling with the exception of ~~roomer boarders~~ roomer boarders and other individuals who occupy a separate apartment within the single unit dwelling. The needy child under the age of 21 who is within the specified degree of relationship must be living with the specified relative or have lived with the specified relative within six months prior to the month in which Emergency Assistance is requested.
- (2) Families of migrant workers shall be covered if the requirements stated in Paragraph (a) of this Rule and the regulations stated in 45 CFR 233.120 are met. 45 CFR 233.120 is hereby adopted by reference under G.S. 150B-14(c).
- (3) Individuals who are illegal aliens are not eligible for Emergency Assistance.

(b) Verification:

- (1) The county shall accept the applicant's statement to verify the household composition.
- (2) The county shall accept the applicant's statement verifying living with and kinship unless questionable. If the applicant's statement is questionable, the county department of social services shall be required to verify living with and kinship according to rules in 10 NCAC 49B .0304.
- (3) The county shall accept the applicant's statement regarding alien status unless questionable. If the applicant's statement is questionable, the county department of social services shall be required to verify the status using documentary evidence provided by the applicant.

Statutory Authority G.S. 143B-153; Chapter 1014, Section 119, Session Laws 1985 (1986 Regular Session).

SECTION .0300 - RESERVE AND INCOME

.0302 INCOME

(c) Determination of Net Income

- (1) Net unearned income is the amount actually received by each applicant or ineligible alien.
- (2) Net earned income, other than income from a farm, small business, property rental, or a ~~roomer boarder~~ roomer boarder, is the amount remaining after payroll deductions for Social Security (FICA), federal and state taxes, medical and hospital insurance, retirement, union dues, and any other deduction required by the employer.
- (3) Net earned income from a farm is the amount remaining after deduction of operational expenses directly related to producing the income. These expenses include but are not limited to:
 - (A) fertilizer, insecticides, seed, crop insurance;
 - (B) livestock maintenance;
 - (C) rent payments;
 - (D) taxes;
 - (E) building and equipment maintenance;
 - (F) interest on debts.
- (4) Net earned income from a small business or from self-employment is the amount remaining after deduction of operational expenses directly related to producing the income. These expenses may include but are not limited to:
 - (A) taxes required to operate the business;

- (B) licenses and permit fees;
- (C) rent payments;
- (D) insurance;
- (E) labor costs;
- (F) maintenance;
- (G) products required to operate the business;
- (H) interest on debts;
- (I) food costs for self-employed babysitters.
- (5) Net earned income from property rental is the amount remaining after deduction of operational expenses directly related to producing the income. These expenses may include but are not limited to:
 - (A) interest on debts;
 - (B) taxes;
 - (C) insurance;
 - (D) maintenance;
 - (E) utilities;
 - (F) labor costs;
 - (G) real estate agent's fees.
- (6) Net earned income from a ~~roomer-boarder~~ roomer boarder is the amount remaining after deduction of the cost of food directly related to producing the income.
- (7) Net earned income of an illegal alien, as defined in this Rule, minus his needs, shall be counted.

Statutory Authority G.S. 143B-153; Chapter 1014, Section 119, Session Laws 1985 (1986 Regular Session).

**SUBCHAPTER 49D - WORK
SUPPLEMENTATION PROGRAM (WSP)
(REPEALED)**

- .0001 WSP OPERATION
- .0002 ELIGIBILITY FOR PARTICIPATION
- .0003 WSP PROCEDURES

Statutory Authority G.S. 143B-153; Chapter 1014, Section 128, 1985 Session Laws (1986 Regular Session); 45 C.F.R. 239.

* * * * *

Notice is hereby given in accordance with G.S. 150B-12 that the DIIIR - Division of Social Services intends to adopt rule(s) cited as 10 NCAC 30 .0217 and 10 NCAC 49F .0001 - .0004.

The proposed effective date of this action is September 1, 1990.

The public hearing will be conducted at 10:00 a.m. on June 6, 1990 at Disability Determination

Services Bldg., 321 Chapanoke Road, Raleigh, NC 27603.

Comment Procedures: Any interested person may present his/her views and comments either in writing, or orally at the hearing. Any person may request information, permission to be heard or copies of the proposed regulations by writing or calling Donna A. Creech, 325 N. Salisbury St., Raleigh, NC 27611, 919/733-3055.

CHAPTER 30 - FOOD ASSISTANCE

SECTION .0200 - MANUAL

.0217 INCOME EXCLUSIONS

Income exclusions are found in 7 CFR 273.9 and this provision is hereby adopted by reference under G.S. 150B-14(c). In addition, the following income shall be excluded in determining eligibility and benefit level.

Earned income from census employment under Section 17(b)(1) of the Food Stamp Act which allows experimental projects, contingent upon receipt of federal regulations in sufficient time for implementation.

Authority G.S. 108A-25; 108A-53; 143B-153; 7 C.F.R. 273.9; Section 17(b)(1) of the Food Stamp Act.

CHAPTER 49 - AFDC

**SUBCHAPTER 49F - TRANSITIONAL CHILD
CARE**

.0001 GENERAL REQUIREMENTS

(a) Requirements for transitional child care are found in 45 CFR Part 256 which is hereby adopted by reference under G. S. 150B-14(c).

(b) To receive transitional child care, the AFDC assistance unit must meet the eligibility requirements as specified in 45 CFR Part 256 and request transitional child care on a state prescribed form. The request form shall be sent to the AFDC payee with the legal notification of ineligibility for AFDC.

Authority G.S. 108A-25; 143B-153; 45 C.F.R. Part 256.

**.0002 METHODS OF PROVIDING CHILD
CARE**

County departments shall provide child care by one of the following methods:

- (1) Vendor payments;
- (2) Providing a cash payment in advance to the caretaker relative;

- (3) Reimbursing the caretaker relative for the amount of child care paid.

Authority G.S. 108A-25; 143B-153; 45 C.F.R. Part 256.

.0003 SLIDING FEE SCALE

(a) The caretaker relative shall pay a monthly fee to the child care provider. The child care provider shall sign the caretaker relative's monthly report of his situation to verify the fee has been paid.

(b) The amount of the fee shall be determined using the sliding fee scale in place for publicly subsidized day care services through the State Division of Facility Services.

(c) The minimum fee to be paid by a caretaker relative shall be five dollars (\$5.00).

Authority G.S. 108A-25; 143B-153; 45 C.F.R. Part 256.

.0004 CHILD CARE RATES AND MAXIMUM PAYMENT

(a) For children who are in a Developmental Day Care Program certified by the Department of Human Resources' Division of Mental Health, Mental Retardation and Substance Abuse, the transitional child care payment shall be the actual monthly cost of care minus the caretaker relative's fee.

(b) For child care arrangements other than those specified in Paragraph (a) of this Rule, the transitional child care payment shall be the actual cost of care up to the local market rate established for the type arrangement minus the caretaker relative's fee. The local market rates shall be developed by the Department of Human Resources' Division of Facility Services in accordance with 45 CFR Part 256. The local market rates shall be published in the AFDC Program Manual.

(c) The statewide maximum payments shall be as follows:

- (1) For children in certified Developmental Day Care programs, the statewide maximum payment shall be the actual cost of the program.
- (2) For other child care arrangements, payment shall be limited to the maximums established as the local market rates.

Authority G.S. 108A-25; 143B-153; 45 C.F.R. Part 256.

Notice is hereby given in accordance with G.S. 150B-12 that the Division of Youth Services intends to amend rules cited as 10 NCAC 44B .0301, .0303, .0504, .0506, .0508, .0512 and .0515.

The proposed effective date of this action is September 1, 1990.

The public hearing will be conducted at 10:00 a.m. on June 6, 1990 at Disability Determination Building, 320 Chapanoke Road, Raleigh, North Carolina.

Comment Procedures: Any interested persons may present his or her views or comments either in writing or orally to the commission. Time limits may be imposed as deemed necessary by the commission chairman. Any person may request information or copies of the proposed regulations by writing Hadley Whittemore at the Division of Youth Services, 705 Palmer Drive, Raleigh, NC 27603 or by calling (919) 733-3011.

CHAPTER 44 - DIVISION OF YOUTH SERVICES

SUBCHAPTER 44B - NORTH CAROLINA MINIMUM STANDARDS FOR JUVENILE DETENTION FACILITIES

SECTION .0300 - STANDARDS FOR PERSONNEL

.0301 STAFF QUALIFICATIONS

(a) Detention director ~~(any person whose full time employment is that of administrative responsibility for daily operation of the facility); is any person, meeting the criteria stated in this Rule, who is employed on a full-time basis for the purpose of fulfilling the administrative responsibilities entailed by the facility's daily operations.~~

- (1) This position shall be filled by a person having a minimum of a bachelor of arts degree or a bachelor of science degree from an accredited college or university, ~~and when possible by a person with graduate training.~~

- (2) The detention director shall also have not ~~have~~ less than three years of related experience, ~~one year~~ two years of which must have been at the administrative or supervisory level. Related experience shall be defined as probation officer ~~and~~ or court counselor, ~~or local or state department of social services, work in a juvenile correctional institution or public administration.~~ as law enforcement, youth ser-

vices, or other human services professional.

(b) Assistant Director and/or Detention Caseworker and/or Supervisor A Youth Center Shift Supervisor or Youth Program Assistant III is any person who provides administrative responsibility in absence of the Director. This position shall be filled by a person having a minimum of bachelor of arts degree or a bachelor of science degree from an accredited college or university. This person shall have a minimum of two years experience as a caseworker, supervisor and/ or group work experience in a child welfare or family agency, children's institution or related experience as defined in (a) of this Rule.

(c) Supervisors and Group Counselors Counselor Technicians are all personnel whose full time employment consists of providing daily programs and supervision of Children juveniles during program hours. The position shall be filled by persons having a minimum of:

- (1) high school education one year college supplemented by three or more years of experience working with children juveniles or teen-age groups; or
- (2) two or more years of college training; or
- (3) any combination of (1) and (2) of this Paragraph equalling not less than three years of training; or
- (4) completion of a two year certificate or associate degree from a community college, or other college, and one year of experience working with children.

(d) Detention Attendants (All Personnel Whose Employment Consists of Supervision During Non-program Hours). This position shall be filled by persons having a minimum of high school education and an expressed interest and ability to interact with children and youth in a positive manner. The Cottage Parent position shall be filled by persons having a minimum of high school education or equivalent and one year experience working with children.

(e) All other staff should shall have, training, experience and competency in job role being performed plus a demonstrated interest and ability to interact with children juveniles and youth in a positive manner.

(f) Comment. None of the personnel standards in this Rule shall be interpreted to disqualify any person now employed on a full-time basis in any juvenile detention facility upon the effective date of ratification of these standards. Any new personnel hired and/ or promotions given to presently employed personnel shall strictly adhere to the standard set out as above.

Statutory Authority G.S. 134A-39; 153A-220; 153A-221; 153A-221.1; 153A-227.

.0303 TRAINING AND STAFF DEVELOPMENT OF DETENTION PERSONNEL

Orientation for new employees, in-service training, and a staff development program shall be provided. All local juvenile detention facility personnel must have successfully completed a training program approved by the division of youth services. in accordance with applicable standards as promulgated by the North Carolina Criminal Justice Education and Training Standards Commission, as set forth in G.S. 17C-6 and 17C-10. A 12-month probationary period is granted for the completion of training for new employees. No person may serve on a temporary or probationary basis for longer than one year.

Statutory Authority G.S. 153A-220; 153A-221.1; 153A-227.

SECTION .0500 - STANDARDS FOR DAILY PROGRAMS AND SERVICES

.0504 MEDICAL CARE

Each detention facility shall develop a written plan for providing routine and emergency medical care. for the children detained, pursuant to the provisions of G.S. 153A-225. The plan shall be administered under the supervision and direction of a licensed physician. The plan shall be developed pursuant to the provisions of G.S. 153A-225 and shall comply with mandatory standards 2-8249, 2-8251, 2-8253, 2-8258, 2-8263, 2-8273, 2-8279, and 2-8290 of the American Correctional Association Standards for Juvenile Detention Facilities, Second Edition, January 1983, which standards are incorporated by reference into these Rules, pursuant to G.S. 150B-14(c). The plan shall also provide for psychological or psychiatric support services developed pursuant to G.S. 153A-225.

Statutory Authority G.S. 134A-20; 134A-39; 153A-221; 153A-221.1; 153A-225; 153A-225.1.

.0506 ROOM RESTRICTION OR CONFINEMENT

Isolation or removal of a child from the group and confinement to his room shall be considered an extreme form of discipline. Close supervision of the child shall be offered during the use of isolation. Time intervals shall be at least once every 30 minutes to communicate with the child and to evaluate the child's need for continued isolation. The staff member shall record in writing his/her observations as to the child's

general attitude and condition and these observations shall be placed in the child's record and entered on the daily log. Isolation shall not normally be for a period of time longer than 42 hours excluding sleeping time. If longer than 42 hours, it shall be reported to the state consultant, or to the State Director of Detention Services, or to the Director of Youth Services.

(a) Removal of a juvenile from the group and restriction to his room or confinement shall be considered an extreme form of discipline. During any room restriction or confinement, locked or unlocked, for either major or minor violations of center rules, staff shall make visual contact with the juvenile at least every 15 minutes and shall, depending on his behavior, interact with the juvenile in an effort to solve problems and determine a release time. The staff member shall record in writing in every case of restriction or confinement, at each 15 minute interval, his observations as to the juvenile's behavior while restricted or confined. The record of room restriction or confinement shall be placed in the juvenile's file and referred to in the daily log.

(b) Policy and procedure shall specify that room restriction for minor misbehavior serves only a "cooling off" purpose and is short in duration, with the time period of no more than 60 minutes, specified at the time of assignment.

(c) Policy and procedure shall require that employees prepare an incident report to be placed in the juvenile's file, where they have reasonable belief that a juvenile has committed a major violation of facility rules. Such reports must include, but are not limited to, the following information:

- (1) specific rule violated;
- (2) explanation of the event, including who was involved, what transpired, and the time and location of the occurrence;
- (3) unusual juvenile behavior;
- (4) staff witnesses;
- (5) disposition of any physical evidence;
- (6) any immediate action taken, including use of force;
- (7) reporting staff member's signature;
- (8) date and time report is made.

(d) When a juvenile has been charged with a major rule violation requiring confinement for the safety of the juvenile or other juveniles, or to ensure the security of the facility, the juvenile may be confined for a period of up to 24 consecutive hours. Any confinement of over 24 consecutive hours must be at the direction of the detention center director or designee and shall be reported to the Manager of Detention Services, Deputy Director of the Division of Youth Ser-

vices or to the Director of the Division of Youth Services.

(e) Written policy and procedure shall specify that any juvenile placed in room restriction or confinement shall be afforded living conditions and privileges approximating those available to the general population. Exceptions are justified by clear and sustained evidence.

Statutory Authority G.S. 153A-221; 153A-221.1.

.0508 RUNAWAYS

Written procedures shall be developed for the notification of runaways from detention with the appropriate law enforcement agencies. Escape from the detention facility shall be immediately reported to the law enforcement for apprehension of the child. It also shall be reported immediately to the child's family (when possible) and to the child's court counselor or to the child's social services worker. Upon the child's return to the detention facility, punitive actions shall be avoided. A written report for the records shall be made when the child runs away from detention. The report shall include name, method of escape, destination, treatment upon return, reasons for the runaway, how it might have been prevented, and any other information which may be pertinent to the escape.

(a) Written procedures for handling runaways shall be developed, reviewed annually, and updated as necessary. These procedures shall be available to all personnel.

(b) The procedure shall include immediate reporting to law enforcement personnel, to the juvenile's parents or guardian, and to the juvenile's court counselor. Any person previously notified of a runaway must be promptly notified of the juvenile's apprehension.

(c) Procedure shall specify that all written reports are entered into the juvenile's file and contain the following information: name, date, time and means of runaway; documentation of reporting; events leading to runaway; destination, if known; response to runaway behavior, upon return; any intervention designed to reduce likelihood of further incidents.

(d) Upon return to the facility, the juvenile shall be confined for a period of up to 24 hours, during which time isolation is documented as established in Rule .0506 of this Section, and in addition, the juvenile is counseled regarding the event. Confinement for periods of over 24 hours must be authorized by the Manager of Detention Services and reviewed every 24 hours by the Manager or a designated administrator not involved in the incident. When one of the runaways any runaway from one of the training

schools is apprehended and immediate transportation back to that school is not possible, detention care shall be provided. Detention care shall be provided where necessary for juveniles who have run away from other jurisdictional districts within the state ~~and~~ or from other states and who require secure custody pending transportation.

Statutory Authority G.S. 7A-574; 134A-39; 153A-221; 153A-221.1.

.0512 EDUCATION

An education program shall be provided and shall be designed to meet the specific needs of the ~~children~~ juveniles. The school shall be operated on a 12-month basis. The classroom facility shall be equipped for academic and remedial work, ~~arts, crafts, music, etc.~~ math, science, language arts, social studies and health education. All detention centers educational programs shall be conducted in a designated area that is well lighted and conducive to learning. The curriculum shall be adapted to the age, capacity and interests of the individual and the group, and it shall aim for an educational experience realistic to the limits of the relatively brief length of stay. A wide variety of ~~diagnostic and individualized learning materials, visual aids, and other special devices~~ audio shall be used. ~~(A learning lab type program is appropriate.)~~ All centers shall have up-to-date academically appropriate books and materials. All teachers employed by the ~~local board of education for the~~ in a detention facility ~~must~~ shall have a North Carolina Teacher's Certificate as required by the State Board of Education. Full-time detention teachers shall be allotted a minimum of five hours planning time per week, without student activity. The teacher shall be considered as part of the detention staff, and shall be included in staff meetings and staff development programs. ~~The child's own school shall be notified immediately of the child's detention and send upon request a summary of the child's achievement and special problems. Also the detention teacher shall report back to the school the child's progress in the detention school and special problems in the detention school.~~ Each detained child juvenile shall be required to participate in the educational program of the detention facility. ~~daily, excluding week-ends and holidays, unless there is some medical and/or psychological reason why the child should not attend class.~~ Participation in the education program shall not be restricted without the approval of the Manager of Detention Services, except for approved absences for illness, and shall

be restricted only in a manner consistent with G.S. 115C-112.

Statutory Authority G.S. 115C-112; 134A-20; 134A-39; 153A-221.1.

.0515 RECREATION

All detention facilities shall provide ~~corecreational~~ recreational programs as well as ~~separate activities~~ appropriate to the different interests and needs of ~~boys and girls~~ juveniles. The schedule for the juveniles shall include at least one hour per day of physical activity and one hour of structured, leisure-time activity. The activities program shall be geared to specific goals for individuals as well as for the group as a whole. It shall also provide as many opportunities as possible for achievement and success for the ~~children~~ juveniles. The program shall be well balanced — ~~organized and unorganized, vigorous and quiet activities, and well supervised, both indoor and outdoor recreational programs.~~ Except those restricted for health or security reasons, all ~~children~~ juveniles shall engage in supervised vigorous outdoor recreation each day unless severely inclement weather conditions do not permit.

Statutory Authority G.S. 134A-20; 134A-39; 153A-221; 153A-221.1.

TITLE 11 - DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Insurance intends to adopt rules cited as 11 NCAC 12 .1001 - .1015.

The proposed effective date of this action is September 1, 1990.

The public hearing will be conducted at 10:00 a.m. on May 31, 1990 at Dobbs Building, 3rd Floor Conference Room, 430 N. Salisbury Street, Raleigh, N.C. 27611.

Comment Procedures: Written comments may be sent to Theresa Shackelford, P.O. Box 26387, Raleigh, N.C. 27611. Oral presentations may be made at the public hearing. Anyone having questions should call Theresa Shackelford at (919) 733-5060, or Ellen Sprengel at (919) 733-4700.

CHAPTER 12 - LIFE: ACCIDENT AND HEALTH DIVISION

**SECTION .1000 - LONG-TERM CARE
INSURANCE**

.1001 APPLICABILITY AND SCOPE

Except as otherwise specifically provided, this Section applies to all new and renewal policies delivered or issued for delivery in North Carolina on or after September 1, 1990.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1002 DEFINITIONS

As used in this Section, the terms "applicant", "certificate", "group long-term care insurance", "long-term care insurance", and "policy" have the meanings set forth in G.S. 58-55-20.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1003 POLICY DEFINITIONS

(a) No policy shall use the words or terms named in this Rule unless they are defined in the policy and the definitions satisfy the requirements in this Rule.

(b) "Acute condition" means that the individual is medically unstable and requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain his health status.

(c) "Medicare" means the "Health Insurance for the Aged Act", Title XVIII of the Social Security Amendments of 1965, as amended.

(d) "Mental or nervous disorder" does not include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1004 POLICY PRACTICES AND PROVISIONS

(a) The terms "guaranteed renewable" or "noncancellable" may not be used in any individual policy without further explanatory language in accordance with the disclosure requirements of 11 NCAC 12 .1005.

(b) No individual policy may contain renewal provisions less favorable to the insured than "guaranteed renewable": Provided that the Commissioner may authorize nonrenewal on a statewide basis, on terms and conditions he considers necessary to best protect the interests of the insureds, if the insurer demonstrates that:

- (1) renewal will jeopardize the insurer's solvency; or
- (2) the actual paid claims and expenses have substantially exceeded the premium and

investment income associated with the policies; and

- (3) the policies will continue to experience substantial and unexpected losses over their lifetimes; and
- (4) the projected loss experience of the policies cannot be significantly improved or mitigated through reasonable rate adjustments or other reasonable methods; and
- (5) the insurer has made repeated and good faith attempts to stabilize loss experience of the policies, including timely filings for rate adjustments.

(c) The term "guaranteed renewable" may be used only when the insured has the right to continue the policy in force by timely payments of premiums; during which period the insurer has no unilateral right to make any change in any provision of the policy while the policy is in force and can not refuse to renew: Provided that rates may be revised by the insurer on a class basis.

(d) The word "noncancellable" may be used only when the insured has the right to continue the policy in force by timely payments of premiums; during which period the insurer has no right to unilaterally make any change in any provision of the policy or in the premium rate.

(e) No policy may limit or exclude coverage by type of illness, treatment, medical condition, or accident, except as follows:

- (1) preexisting conditions as specified in G.S. 58-55-30;
- (2) mental or nervous disorders, except for Alzheimer's Disease;
- (3) alcoholism and drug addiction;
- (4) illness, treatment, or medical condition arising out of:
 - (A) war or act of war (whether declared or undeclared);
 - (B) participation in a felony, riot, or insurrection;
 - (C) service in the armed forces or units auxiliary thereto;
 - (D) suicide, attempted suicide, or intentionally self-inflicted injury; or
 - (E) aviation activity as a nonfare-paying passenger.
- (5) treatment provided in a government facility (unless otherwise required by law); services for which benefits are available under Medicare, under any other governmental program (except Medicaid), or under any state or federal workers' compensation, employer's liability, or occupational disease law; services provided by a member of the insured's immediate family; and services for which no charge

is normally made in the absence of insurance.

(f) Termination of a policy shall be without prejudice to any benefits payable for institutionalization if the institutionalization began while the policy was in force and continues without interruption after termination. Such extension of benefits beyond the period during which the policy was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits; and may be subject to any policy waiting period and all other applicable provisions of the policy.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1005 CONTINUATION OR CONVERSION

(a) Group long-term care insurance newly issued or renewed in North Carolina on or after September 1, 1990, shall provide covered individuals with a basis for continuation or conversion of coverage.

(b) As used in this Rule, "a basis for continuation of coverage" means a policy provision that maintains coverage under the existing group policy when such coverage would otherwise terminate and that is subject only to the continued timely payments of premiums when due. A group policy that lawfully restricts provisions of benefits and services to, or contains incentives to use, certain providers or facilities, may provide continuation benefits that are substantially equivalent to the benefits of the existing group policy. The Commissioner shall make a determination as to the substantial equivalency of benefits; and in doing so shall take into consideration the differences between managed care and non-managed care plans, including provider system arrangements, service availability, benefit levels, and administrative complexity.

(c) As used in this Rule, "a basis for conversion of coverage" means a policy provision that an individual:

- (1) whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured class; and
- (2) who has been continuously insured under the group policy, and any group policy that it replaced, for at least three months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he is covered, without evidence of insurability.

(d) As used in this Rule, "converted policy" means an individual policy providing benefits identical to or benefits determined by the commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made lawfully restricts provision of benefits and services to, or contains incentives to use, certain providers or facilities, the commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including provider system arrangements, service availability, benefit levels, and administrative complexity.

(e) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than 31 days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy; and shall be renewable annually.

(f) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.

(g) Continuation of coverage or issuance of a converted policy is mandatory, except where:

- (1) termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or
- (2) the terminating coverage is replaced, not later than 31 days after termination, by group coverage that is effective on the day following the termination of coverage, that provides benefits identical to, or benefits determined by the commissioner to be substantially equivalent to or in excess of, those provided by the terminating coverage, and the premium for which group coverage is calculated in a manner consistent with the requirements of Paragraph (f) of this Rule.

(h) Notwithstanding any other provision of this Rule, a converted policy that is issued to an individual, who at the time of conversion is covered by another policy that provides benefits on the basis of incurred expenses, may contain a pro-

vision that results in a reduction of benefits payable if the benefits provided under the other policy, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund that reflects the reduction in benefit payable.

(i) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.

(j) Notwithstanding any other provision of this Rule, any insured individual, whose eligibility for group policy coverage is based upon his relationship to another person, is entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.

(k) As used in this Rule, a "managed care plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management, or use of specific provider networks.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1006 REQUIRED DISCLOSURE PROVISIONS

(a) Individual policies shall contain a renewability provision. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This Paragraph does not apply to policies that do not contain a renewability provision and under which the right to not renew is reserved solely to the policyholder.

(b) Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual policy, all riders or endorsements added to an individual policy after date of issue or at reinstatement or renewal that reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement that increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, unless the increased benefit or coverage is required by

law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider, or endorsement.

(c) A policy that provides for the payment of benefits based on standards described as "usual and customary", "reasonable and customary", or words of similar import, shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.

(d) If a policy contains any permitted limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and shall be labeled as "Preexisting Condition Limitations".

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1007 PROHIBITION OF POST-CLAIMS UNDERWRITING

(a) All applications for policies except those that are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.

(b) If an application for a policy contains a question that asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

(c) If, at the time of the application, the medications listed in the application were known or should have been known by the insurer or by the insurer's agent or representative to be directly related to a medical condition for which coverage would otherwise be limited or denied, the policy shall not be rescinded nor shall coverage be denied or limited for that condition.

(d) Except for policies that are guaranteed issue:

- (1) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a policy:

"Caution: If your answers on this application are incorrect or untrue, [name of company] has the right to deny benefits or rescind your policy".

- (2) The following language, or language substantially similar to the following, shall be set out conspicuously on the policy at the time of delivery:

"Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the

questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, [name of company] has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises. If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]"

- (3) Prior to issuance of a policy to an applicant age 80 years or older, the insurer shall obtain one of the following: A report of a physical examination; an assessment of functional capacity; an attending physician's statements; or copies of medical records.

(c) A copy of the completed application or enrollment form shall be delivered to the insured no later than at the time of delivery of the policy unless it was retained by the applicant at the time of application.

(f) Every insurer selling or issuing policies shall maintain a record of all policy rescissions, both in North Carolina and countrywide, except those that insureds voluntarily effectuated; and shall annually furnish this information to the commissioner in the format prescribed by the National Association of Insurance Commissioners.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1008 MINIMUM STANDARDS FOR HOME HEALTH CARE BENEFITS

(a) A policy providing benefits for home health care services may not limit or exclude benefits by:

- (1) requiring that the insured or claimant would need skilled care in a skilled nursing facility if home health care services were not provided;
- (2) requiring that the insured or claimant first or simultaneously receive nursing or therapeutic services in a home or community setting before home health care services are covered;
- (3) limiting eligible services to services provided by registered nurses or licensed practical nurses;
- (4) requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide or by another licensed or certified home care

worker acting within the scope of his or her licensure or certification.

- (5) requiring that the insured or claimant have an acute condition before home health care services are covered;

- (6) limiting benefits to services provided by Medicare-certified agencies or providers.

(b) Home health care coverage may be applied to the non-home health care benefits provided in the policy when determining maximum coverage under the terms of the policy.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1009 REQUIREMENT TO OFFER INFLATION PROTECTION

(a) No insurer may offer a policy unless the insurer also offers to the applicant the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations that are meaningful to account for reasonably anticipated increases in the costs of long-term care services covered by the policy. Insurers must offer to each applicant, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

- (1) Increases benefit levels annually, [in a manner so that the increases are compounded annually];
- (2) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status as long as the option for the previous period has not been declined; or
- (3) Covers a specified percentage of actual or reasonable charges.

(b) Where the policy is issued to a group, the required offer in Paragraph (a) of this Rule shall be made to the group policyholder; except, if the policy is issued to a group defined in G.S. 58-55-20(3) other than to a continuing care facility, the offering shall be made to each proposed certificate holder.

(c) The offer in Paragraph (a) of this Rule is not required of:

- (1) life insurance policies or riders containing accelerated long-term care benefits, nor
- (2) expense incurred long-term care insurance policies.

(d) Insurers shall include the following information in or with the outline of coverage:

- (1) a graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic compar-

ison shall show benefit levels over at least a 20-year period.

- (2) any expected premium increases or additional premiums to pay for automatic or optional benefit increases. If premium increases or additional premium will be based on the attained age of the applicant at the time of the increase, the insurer shall also disclose the magnitude of the potential premiums the applicant would need to pay at ages 75 and 85 for benefit increases. An insurer may use a reasonable hypothetical or a graphic demonstration for the purposes of this disclosure.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

1010 REQUIREMENTS FOR REPLACEMENT

(a) Individual and direct response solicited long-term care insurance application forms shall include a question designed to elicit information as to whether the proposed policy is intended to replace any other accident and health or long-term care insurance policy presently in force. A supplementary applicant or other form to be signed by the applicant containing such a question may be used.

(b) Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its agent, shall furnish the applicant, prior to issuance or delivery of the individual policy, a notice regarding replacement of accident and health or long-term care coverage. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

"NOTICE TO APPLICANT REGARDING REPLACEMENT OF INDIVIDUAL ACCIDENT AND HEALTH OR LONG-TERM CARE INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and health or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name]. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of

and seriously consider certain factors that may affect the insurance protection available to you under the new policy.

1. Health conditions that you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
3. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above Notice to Applicant was delivered to me on:

(Date)

(Applicant's Signature)"

(c) Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and health or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

**"NOTICE TO APPLICANT REGARDING
REPLACEMENT OF ACCIDENT AND
HEALTH OR LONG-TERM CARE
INSURANCE"**

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and health or long-term care insurance and replace it with the long-term care insurance policy delivered with this notice and issued by [company name]. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors that may affect the insurance protection available to you under the new policy.

1. Health conditions that you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
3. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past

medical history has been left out of the application.

(Company Name)"

*Statutory Authority G.S. 58-2-40(1);
58-55-30(a).*

**.1011 DISCRETIONARY POWERS OF
COMMISSIONER**

The Commissioner may, upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this Section with respect to a specific policy upon a written finding that:

- (1) the modification or suspension would be in the best interest of the insureds; and
- (2) the purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and
- (3) the modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or
- (4) the policy is to be issued to residents of a continuing care facility or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or
- (5) the modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

*Statutory Authority G.S. 58-2-40(1);
58-55-30(a).*

.1012 RESERVE STANDARDS

(a) When long-term care benefits are provided through the acceleration of benefits under group or individual life insurance policies or riders to such policies, policy reserves for such benefits shall be determined in accordance with G.S. 58-58-50. Claim reserves must also be established in the case when such policy or rider is in claim status.

(b) Reserves for policies and riders subject to this Rule should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance

benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

(c) In the development and calculation of reserves for policies and riders subject to this Rule, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures, and all other considerations that have an effect on projected claim costs, including the following: definition of insured events; covered long-term care facilities; existence of home convalescence care coverage; definition of facilities; existence or absence of barriers to eligibility; premium waiver provision; renewability; ability to raise premiums; marketing method; underwriting procedures; claims adjustment procedures; waiting period; maximum benefit; availability of eligible facilities; margins in claim costs; optional nature of benefit; delay in eligibility for benefit; inflation protection provisions; and guaranteed insurability option.

(d) Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

(e) When long-term care benefits are provided other than as in Paragraphs (a) through (d) of this Rule, reserves shall be determined in accordance with 11 NCAC 11G .0006.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1013 LOSS RATIO

Benefits under individual policies shall be deemed to be reasonable in relation to premiums, provided that the expected loss ratio is at least 60 percent and is calculated in a manner that provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

- (1) statistical credibility of incurred claims experience and earned premiums;
- (2) the period for which rates are computed to provide coverage;
- (3) experienced and projected trends;
- (4) concentration of experience within early policy duration;
- (5) expected claim fluctuation;
- (6) experience refunds, adjustments, or dividends;
- (7) renewability features;
- (8) all appropriate expense factors;
- (9) interest;

- (10) experimental nature of the coverage;
- (11) policy reserves;
- (12) mix of business by risk classification; and
- (13) product features such as long elimination periods, high deductibles, and high maximum limits.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1014 FILING REQUIREMENT

Before an insurer offers a group policy to a resident of North Carolina pursuant to G.S. 58-55-25, it shall file with the Commissioner evidence that the group policy has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those of North Carolina.

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

.1015 STANDARD FORMAT OUTLINE OF COVERAGE

(a) The outline of coverage shall be a free-standing document, using no smaller than ten point type; and shall contain no material of an advertising nature.

(b) Text that is capitalized or underscored in the standard format outline of coverage may be emphasized by other means that provide prominence equivalent to such capitalization or underscoring.

(c) Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.

(d) Format for outline of coverage:

"[COMPANY NAME]

[ADDRESS - CITY AND STATE]

[TELEPHONE NUMBER]

LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates that are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy]

[certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises. If, for any reason, any of your answers are incorrect, contact the company at this address:

[insert address]

1. This policy is [an individual policy of insurance] [a group policy] that was issued in [indicate jurisdiction in which group policy was issued].
2. **PURPOSE OF OUTLINE OF COVERAGE.** This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverages for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you **READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!**
3. **TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.**
 - (a) [Provide a brief description of the right to return -- 'free look' provision of the policy.]
 - (b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]

4. **THIS IS NOT MEDICARE SUPPLEMENT COVERAGE.** If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

- (a) [For agents] Neither [company name] nor its agents represent Medicare, the federal government, or any state government.
 - (b) [For direct response] [company name] is not representing Medicare, the federal government, or any state government.

5. **LONG-TERM CARE COVERAGE.** Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

6. **BENEFITS PROVIDED BY THIS POLICY.**
 - (a) [Covered services, related deductible (s), waiting periods, elimination periods and benefit maximums]
 - (b) [Institutional benefits, by skill level]
 - (c) [Non-institutional benefits, by skill level]

[Any benefit screens must be explained in this Section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for

long-term care, then these qualifying criteria or screens must be explained.]

7. LIMITATIONS AND EXCLUSIONS.

[Describe:

- (a) Preexisting conditions;
- (b) Non-eligible facilities or providers;
- (c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) Exclusions or exceptions;
- (e) Limitations.]

[This Section should provide a brief specific description of any policy provisions that limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG - TERM CARE NEEDS.

8. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because

the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time;
- (b) Any automatic benefit adjustment provisions;
- (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
- (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
- (e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]

9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

- [(a) Described the policy renewability provisions;
- (b) For group coverage, specifically describe continuation and conversion provisions applicable to the certificate and group policy;
- (c) Describe waiver of premium provisions or state that there are not such provisions;
- (d) State whether or not the company has a right to change premium, and if such a right exists, describe clearly and concisely each circumstance under which premium may change.]

10. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

[State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision that provides preconditions to the availability of policy benefits for such an insured.]

11. PREMIUM.

- [(a) State the total annual premium for the policy;
- (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium that corresponds to each benefit option.]

12. ADDITIONAL FEATURES.

- [(a) Indicate if medical underwriting is used;
- (b) Describe other important features.]

Statutory Authority G.S. 58-2-40(1); 58-55-30(a).

TITLE 12 - DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-12 that the Department of Justice - Office of the Attorney General intends to amend rule(s) cited as 12 NCAC 21 .0202, .0203, .0301; repeal rule(s) cited as 12 NCAC 21 .0401.

The proposed effective date of this action is September 1, 1990.

The public hearing will be conducted at 10:00 a.m. on June 14, 1990 at Alcoholic Beverage Control Commission Hearing Room, 3322 Old Garner Road, Raleigh, North Carolina 27610-5631.

Comment Procedures: Any interested person may present written comments for consideration by the Attorney General. The hearing record will remain open for receipt of comments from May 14, 1990 through June 13, 1990. Written comments should be received by the Company Police Administrator by midnight on June 13, 1990, to be considered as part of the hearing. Comments should be addressed to:

Mr. Wayne Coates
Company Police Administrator
Post Office Drawer 149
Raleigh, North Carolina 27602

Any person may present oral comments at the hearings. Requests to speak should be presented to Mr. Wayne Coates at the above address no later than five (5) days before the date of the hearing. Additional comments may be allowed by the Attorney General by signup at the public hearing as time allows. All presentations will be limited to five (5) minutes.

CHAPTER 2 - OFFICE OF THE ATTORNEY GENERAL

SUBCHAPTER 2I - COMPANY AND RAILROAD POLICE

SECTION .0200 - COMMISSIONING

.0202 MINIMUM STANDARDS FOR COMMISSIONING

Persons eligible for commission on the basis of their employment as prescribed in G.S. 74A-1, must meet the following requirements before a Commission will be granted:

- (3) have satisfactorily completed attained a score of not less than 80 percent on a written examination of basic knowledge of laws of arrest, search, and investigation, and of these Rules to be administered by a representative of the North Carolina Department of Justice;

Note: All examination questions will be based on the pamphlet "Laws of Arrest, Search, and Investigation" book Arrest, Search, and Investigation which is available

from the Institute of Government, the University of North Carolina at Chapel Hill, Chapel Hill, North Carolina 27514, and these Rules.

Applicants will be advised in writing of test dates and sites at least five days prior to the examination;

- (5) applicants who do not hold General Certification as a law enforcement officer issued by the Criminal Justice Standards Division, must submit to and successfully complete a polygraph examination administered by the State Bureau of Investigation.

Statutory Authority G.S. 74A-1; 143A-54.

.0203 APPLICATION

- (2) if the applicant holds General Certification issued by the North Carolina Criminal Justice Education and Training Standards Commission, the application must contain the following:
 - (D) One Two recent 1" x 1-1/4" (non-polaroid) close-up color photograph photographs; ~~or~~
 - (E) Satisfactory proof of a negative drug screen;
 - (F) Satisfactory proof of successful completion of annual in-service firearms re-qualification training;
 - (G) Authorization for release of records (CP-1);
 - (H) Drug Screen Consent Form (CP-2); or
- (3) if the applicant does not hold General Certification, the application must contain the following:
 - (G) One Two recent 1" x 1-1/4" (non-polaroid) close-up color photograph photographs; and
 - (H) Results of the Employment Security Commission Test (236NC);
 - (H) Proof of satisfactory completion of a Criminal Justice Education and Training Standards Commission accredited basic law enforcement training course;
 - (I) Satisfactory proof of a negative drug screen;
 - (J) Authorization for Release of Records (CP-1);
 - (K) Drug Screen Consent Form (CP-2).

Statutory Authority G.S. 74A-1; 143A-54.

SECTION .0300 - CONDUCT OF COMMISSIONED POLICEMEN

.0301 TENURE

A commission shall remain in effect until:

- (2) The employee ceases to be employed as a police ~~man~~ officer by a company or institution which can employ company or railroad police;
- (5) Evidence is presented that the person has committed an act which would have originally caused denial of the application or an act prohibited by Rule .0304 of this Section; or
- (6) ~~The officer fails to complete a Criminal Justice Education and Training Standards Commission accredited law enforcement basic training course within 12 months of his swearing; or~~
- (7) (6) The Criminal Justice Education and Training Standards Commission suspends or revokes an officer's certification for cause.

Statutory Authority G.S. 74A-1; 74A-2(d); 74A-5; 143A-54.

SECTION .0400 - PROCEDURAL RULES

.0401 ADMINISTRATIVE HEARING PROCEDURES (REPEALED)

Statutory Authority G.S. 150B-14(a)(4); 150B-38(h).

TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION

Notice is hereby given in accordance with G.S. 150B-12 that the State Board of Education intends to amend rule(s) cited as 16 NCAC 6G .0202.

The proposed effective date of this action is September 1, 1990.

The public hearing will be conducted at 2:00 p.m. on May 31, 1990 at Third Floor Board Room, Education Building, 116 W. Edenton Street, Raleigh, NC 27603-1712.

Comment Procedures: Any interested person may present views and comments either in writing prior to or at the hearing or orally at the hearing.

CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER 6G - EDUCATION AGENCY RELATIONS

SECTION .0200 - ACCREDITATION

.0202 ACCREDITATION PROCEDURES

(a) The department awards accreditation to LEAs on the basis of a LEA's efforts to provide quality and equity of educational opportunity to each student in its jurisdiction.

(b) Until the SBE adopts a new accreditation plan pursuant to G.S. 115C-81, LEAs receive accreditation as follows:

- (1) The superintendent notifies the department in writing of the LEA's intention to seek accreditation.
- (2) The department assigns staff to work with the LEA as it plans its comprehensive educational plan. The plan examines current operations and identifies intended improvements.
- (3) The comprehensive educational plan must include:
 - (A) information about the LEA and the community;
 - (B) the results the LEA seeks to achieve for all students and the principal areas of student learning being pursued;
 - (C) specific learning results students are expected to achieve and methods by which pupil progress is determined;
 - (D) basic improvement plans for instructional programs, instructional support and auxiliary services; and
 - (E) the LEA's priorities and completion dates.
- (4) The department will review the comprehensive educational plan, conduct an on-site review of the plan and make suggestions to the LEA.
- (5) The LEA adopts the comprehensive educational plan.
- (6) The state accreditation committee makes recommendations to the Superintendent of Public Instruction, who presents the plan to the SBE for approval.
- (7) The department will assist the LEA as necessary during the implementation of the plan.

(c) The department accredits LEAs for a period of six years. LEA may seek reaccreditation on the basis of past performance and the quality of the new comprehensive educational plan.

(d) Non-public schools may seek state accreditation on the same basis and in the same way as public schools.

(a) For the purposes of this Rule, the accreditation year begins with the initial day of staff orientation for a particular academic year and ends with the day before orientation for the following academic year.

(b) The Superintendent of Public Instruction appoints a state accreditation committee, which

makes recommendations to the SBE concerning accreditation of LEAs.

(c) LEAs that are currently accredited will retain that status as follows:

(1) LEAs not participating in the performance-based accountability program will retain accredited status until the SBE takes formal action following the first five-year review as described in Paragraph (f) of this Rule. Accreditation under this Rule is awarded on the basis of the LEA's successful completion of a five-year review.

(2) LEAs participating in the performance-based accountability program will retain accredited status until the SBE takes formal action on an annual report on the performance-based accountability program submitted by the LEA.

(d) During each accreditation year, the LEA must evaluate its compliance with each state accreditation standard, as those standards are adopted and amended from time to time by the SBE.

(1) LEAs not participating in the performance-based accountability program must evaluate compliance with each performance standard and with each opportunity standard.

(2) LEAs participating in the performance-based accountability program must evaluate compliance with each state performance standard.

(e) Each LEA must report its compliance decisions through the annual reporting procedure, using forms supplied by the Department. The Department will review the annual report and may issue a challenge based on erroneous or misleading information. In the absence of a challenge, the Department will prepare a summary report that indicates the LEA's overall compliance with state accreditation standards. After the annual reporting and review has been completed, the SBE may:

(1) continue accredited status, if the LEA held accredited status and continues to meet accreditation requirements;

(2) designate the LEA accredited with probationary warning, if the LEA was accredited before the annual report and the current annual report indicates failure to meet accreditation requirements;

(3) withdraw accredited status if the LEA held accredited with probationary warning status as a result of the previous annual report and the LEA continues to fail to meet accreditation requirements; or

(4) reinstate accredited status if the LEA was either under probationary warning or not accredited on the basis of the previous annual report, and the LEA's current annual report establishes that it meets accreditation requirements.

(f) Every five years each LEA not participating in the performance-based accountability program must undertake an in-depth review in cooperation with Department staff in order to evaluate the LEA's programs and operations according to SBE standards.

(1) Department and LEA personnel jointly conduct in-depth assessments of each program and operational area, analyzing compliance with SBE standards based on all available information.

(2) A staff member from each Department division or section that participates in a joint assessment must prepare a summary report that gives an overview of the program or operation under review:

(A) a list of the program's strengths and exemplary features;

(B) a list of unmet standards and a justification for the compliance decision for each. The LEA may respond to compliance decisions with which the LEA does not concur.

(3) Joint assessment visits are made prior to December 31 of the accreditation year.

(4) The Department reviews joint assessment reports and prepares a summary analysis of each LEA that indicates overall compliance with SBE standards.

(A) If summary data show that the LEA meets state accreditation requirements, the Department sends the summary report and all joint assessment reports to the state accreditation committee for review.

(B) If summary data show that the LEA will not meet state accreditation requirements, the Department will schedule a formal on-site visit. The purposes of this visit are to discuss and verify joint assessment reports and to begin Department assistance for areas of non-compliance by the LEA. After the visit is completed, the Department prepares a summary report to the state accreditation committee about accreditation status.

(g) Based on recommendations from the state accreditation committee, the SBE awards accredited status to LEAs that:

(1) are in compliance with 75 percent of the performance standards and, if the LEA is not participating in the performance-

based accountability program, 75 percent of the opportunity standards;

- (2) are in compliance with all state statutes;
- (3) are complying with the intent of the basic education program;
- (4) show balanced compliance among the several areas of instruction and operation;
- (5) have no serious conditions related to safety, sanitation or security; and
- (6) have no serious improprieties in financial management or record-keeping.

(h) If a IEA disagrees with the SBE's accreditation decision, the chairperson of the local board of education may submit a letter of appeal to the SBE. Based on additional information, the state accreditation committee may make a revised recommendation to the SBE. The SBE makes the final accreditation decision. The IEA's prior accreditation status remains in effect until the SBE completes the appeal process.

Authority G. S. 115C-12(9)c.; 115C-81; N.C. Constitution, Article IX, Sec. 5.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-12 that the Office of State Personnel/State Personnel Commission intends to amend rule(s) cited as 25 NCAC 1C .0215; 1D .0504, .0509, .0517, .0610, .0701, .0706; 1K .0502; and adopt rule(s) cited as 25 NCAC 1B .0107 - .0120; 1D .0711 - .0712; 1L .0201 - .0209.

The proposed effective date of this action is September 1, 1990.

The public hearing will be conducted at 9:00 a.m. on June 5, 1990 at Personnel Development Center, 101 W. Peace Street, Raleigh, North Carolina 27611.

Comment Procedures: Interested persons may present statements orally or in writing at the hearing or in writing prior to the hearing by mail addressed to: Drake Maynard, Office of State Personnel, 116 W. Jones Street, Raleigh, North Carolina 27603.

CHAPTER 1 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 1B - STATE PERSONNEL COMMISSION

SECTION .0100 - GENERAL PROVISIONS

.0107 PERSONNEL COMMISSION MEETINGS

(a) The North Carolina State Personnel Commission (Commission) meets at least once each quarter of the calendar year. The dates are set in advance of the coming calendar year. A copy of the Commission's scheduled meetings may be obtained by contacting the Director, Employee Services Division, Office of State Personnel (OSP), 116 West Jones Street, Raleigh, N.C. 27611.

(b) Any person or organization wishing to be given advance notice of any Commission meeting may request such notification by writing to: Director, Employee Services Division, OSP, 116 W. Jones Street, Raleigh, N.C. 27611. The request must include the name, address and telephone number of a contact person.

(c) Meetings of the Commission are held at the OSP Employee and Management Development Center, 101 West Peace St., Raleigh, N.C., unless specified otherwise.

(d) Unless specified otherwise, a meeting of the Commission consists of public hearing, reading of minutes, business session, oral presentations by contested case parties and an executive session.

(e) Meetings begin at 9:00 a.m. unless otherwise indicated.

(f) Persons wishing to speak at the public hearing portion of the Commission meeting should sign up in advance by notifying the Employee Services Division, OSP, either in writing or by telephone (919) 733-7112. Persons may also sign up on the day of the meeting. Presentations to the Commission shall be limited to no more than 15 minutes per speaker, unless extended by a vote of the Commission.

(g) Meetings of the Commission, except for the executive session, are open to the public. The executive session of the Commission meeting is closed to the public. Only staff of the OSP may take part in the business session portion of the meeting; other persons may participate if specifically invited to do so by the Chairman.

(h) Any person wishing to present written material to the Commission should prepare nine copies to be distributed: one copy to each Commissioner, one copy to Commission counsel and one copy to Commission staff.

(i) All members of the Commission will provide statements of economic interest to the N.C. Board of Ethics in the time and fashion required by that Board.

Statutory Authority G.S. 126-4.

.0108 COMMISSION STAFF

(a) The OSP is the administrative staff for the Commission. The Employee Services Division provides direct staff support to the Commission.

(b) Mail addressed to the Commission may be sent to the Director, Employee Services Division, 116 West Jones Street, Raleigh, N.C. 27611.

(c) The State Personnel Director is the registered agent for service of legal process on the Commission.

Statutory Authority G.S. 126-4.

.0109 COMMISSION ACTIONS

All decisions of the Personnel Commission, except those relating to employee grievances, are rendered in open session. Decisions of the Commission involving employee grievances are reached in executive session and communicated in writing from the State Personnel Director. Information relating to such decisions will not be released publicly until the OSP has received notice that each party has received a copy of the Commission's decision.

Statutory Authority G.S. 126-4.

.0110 MOTIONS

Motions may be made by any member of the Commission, including the Chairman. For further action to be taken, the motion made must be seconded by at least one other Commissioner other than the member who made the motion. A motion which is not seconded after two calls for seconds by the Chairman shall die and not be acted upon. A motion which was properly seconded shall be discussed to the extent the Commission desires before any vote is taken. A vote may be taken only after all discussion has been concluded. The Chairman may close discussion, at his discretion, and call for a vote. Minutes of the Commission will reflect the name of the Commissioner making the motion and the name(s) of the Commissioner(s) seconding the motion.

Statutory Authority G.S. 126-4.

.0111 VOTING

At the appropriate time, in accordance with Rule .0110 of this Section, a properly seconded motion shall be voted on by the members of the Commission present. All members present, including the Chairman, must either vote or abstain. All votes shall be voice votes, unless otherwise decided by the Commission, with AYE signifying agreement with the motion and NAY signifying disagreement with the motion. Any member, including the Chairman, may ask that

a vote be taken by raising hands, so that a definite count of the vote may be taken. Motions which receive a majority favorable vote are adopted. Motions which receive a tie vote or a majority negative vote are not adopted. Minutes of the Commission will reflect the vote taken on each motion and the outcome of the vote. The minutes will also reflect the names of each commissioner with his vote if voting is done by hand. Any Commissioner abstaining from a vote will be so indicated in the minutes.

Statutory Authority G.S. 126-4.

.0112 ABSTENTION

A commissioner who has any conflict of interest, either actual or apparent, shall abstain from taking any part in any action before the Commission. This abstention shall include, but is not limited to, refraining from discussion in the public or business session, making of or seconding of motions and voting. A commissioner who is abstaining from an action the Commission is considering should announce such abstention at the earliest possible time in the public or business session and prior to any discussion or vote on the action.

Statutory Authority G.S. 126-4.

.0113 DUTIES OF THE CHAIRMAN

The Chairman shall be authorized to perform at least the following duties and responsibilities at each meeting of the Commission:

- (1) The Chairman shall call the meeting to order.
- (2) The Chairman may make opening remarks as he deems necessary.
- (3) The Chairman shall introduce each portion of the meeting and make whatever remarks he deems necessary as part of the introduction.
- (4) The Chairman may extend or limit, on his own or upon the vote of the Commission, the time allotted for a speaker making a presentation to the Commission.
- (5) The Chairman shall call for motions, seconds, discussion and votes as appropriate.
- (6) The Chairman may call for a recess or meal period as appropriate.
- (7) The Chairman shall adjourn the open portion of the meeting and begin the executive portion of the meeting.
- (8) The Chairman shall call for the adjournment of each meeting.
- (9) The Chairman may direct the removal of individuals from Commission meetings for

disruptive conduct or failure to comply with Commission rules.

The Chairman shall have the authority to exercise such other responsibilities not enumerated in this Rule which are necessary to the performance of the business of the Commission.

Statutory Authority G.S. 126-4.

.0114 ORDER OF BUSINESS

Unless changed by a vote of the Commission, the order of business at each meeting of the N.C. State Personnel Commission will be as follows:

- (1) Call to order by the Chairman.
- (2) Call for reading/approval of minutes of the last meeting.
- (3) Public hearing session.
- (4) Business session.
- (5) Oral presentations by contested case hearing parties.
- (6) Executive session.
- (7) Adjournment of meeting.

Additional portions may be added by vote of the Commission.

Statutory Authority G.S. 126-4.

.0115 SPECIAL MEETINGS

Other than the regularly scheduled meetings (see Rule .0107 of this Section), a meeting may be called at any time by a majority of the Commission. Such a meeting must be announced in accordance with G.S. 143-318.10 and conducted in accordance with this Section. Special meetings may be full meetings with a regular order of business as set out in this Rule or they may be limited to one or more special matters.

Statutory Authority G.S. 126-4; 143-318.10.

.0116 DUTIES OF CHAIRMAN BETWEEN MEETINGS OF THE COMMISSION

The Chairman of the Commission shall have such duties and responsibilities between each meeting of the Commission as the Chairman and/or the Commission determine to be necessary, including but not limited to:

- (1) Receipt and response to correspondence addressed to the Commission;
- (2) Review of proposed agenda of meetings;
- (3) Administration of matters regarding attendance and credentials of members of the Commission.

Statutory Authority G.S. 126-4.

.0117 STANDING/SPECIAL COMMITTEES

The Chairman of the Commission shall appoint such standing or special committees as the Chairman or the Commission shall deem necessary. The Chairman shall designate the Chairman of each committee from among its members and shall be an ex officio member of all committees. A majority of the duly appointed members of a committee shall constitute a quorum.

Statutory Authority G.S. 126-4.

.0118 MINUTES

Minutes and other records of all Commission meetings shall be kept under the direction of the Director of the Employee Services Division of the Office of State Personnel, such record to be supplemented, as necessary, by electronic recording. Minutes shall be maintained in the Employee Services Division of the Office of State Personnel permanently.

Statutory Authority G.S. 126-4.

.0119 NOTICE OF COMMISSION ACTION

In accordance with N.C.G.S. Chapter 150B, the State Personnel Director or an appropriate designee shall be responsible for the timely issuance of any applicable notices to those parties who, pursuant to the statute in this Rule, must be given legal notice of Commission meetings, hearings, decisions and official actions.

Statutory Authority G.S. 126-4; 150B.

.0120 APPOINTMENT OF VICE-CHAIRMAN

The Chairman shall appoint a vice-chairman, who shall serve at the pleasure of the Chairman, to preside over meetings of the Commission if the Chairman is unable to attend a meeting. The authority of the Vice-Chairman shall be limited to presiding over the meeting in the absence of the Chairman. The Vice-Chairman shall exercise only those powers necessary to carry out the responsibilities of the Chairman at the meeting in the absence of the Chairman.

Statutory Authority G.S. 126-4.

**SUBCHAPTER 1C - PERSONNEL
ADMINISTRATION**

**SECTION .0200 - GENERAL EMPLOYMENT
POLICIES**

.0215 EMPLOYMENT CONTRACTS

(a) No person shall be required, as a condition of employment subject to N.C.G.S. Chapter 126 to enter into a contractual arrangement with any

state agency or university for employment with that agency or university. However, this shall not prohibit apprenticeship agreements for training purposes when executed according to the provisions of N.C.G.S. Chapter 94.

(b) No state agency or university may require, as a condition of employment, that a person agree, in writing or otherwise, to a minimum specified length of employment, except for the minimum training period specified in an apprenticeship agreement duly executed under G.S. Chapter 94.

Statutory Authority G.S. 94; 126-4.

SUBCHAPTER 1D - COMPENSATION

SECTION .0500 - SEPARATION

.0504 REDUCTION IN FORCE

(e) ~~Leave and Salary Increases~~

(3) ~~Leave Without Pay. To enable additional benefits, employees scheduled for reduction-in-force shall, upon their request, be placed in leave without pay status.~~

Statutory Authority G.S. 126-4.

.0509 SEVERANCE SALARY CONTINUATION

Severance salary continuation shall be paid to a state employee who is terminated as a result of reduction-in-force. This policy provides for uniform application of severance salary continuation for employees who are involuntarily separated due to reduction-in-force. Payment is based on total state service supplemented by an age factor. The age factor recognizes that older employees, although protected from discrimination on the basis of age, do have a more difficult time finding new employment due to lack of transferable skills, current salary level, geographic location and other factors.

(1) Eligible Employees:

(a) A permanent full-time or part-time (20 hours or over) employee who does not obtain another permanent job in state government by the effective date of the reduction-in-force shall be eligible for severance salary continuation ~~whether when separated. or placed in leave without pay status.~~ This shall not apply to employees whose reduction-in-force is not considered permanent; that is, employees who are reduced-in-force on a temporary or seasonal basis with the expectation that they will return to work within twelve months.

Statutory Authority G.S. 126-4(10); 143-27.2.

.0517 LEAVE

(b) Sick Leave. Accumulated sick leave at the time of separation shall be reinstated if reemployment occurs within three years.

(c) ~~Leave Without Pay Option. To enable additional benefits, employees scheduled to be separated shall, upon their request, be placed in a leave without pay status.~~

(d) Salary Increases. If reemployed during the twelve month period, time earned toward a salary increase shall be considered in determining eligibility for the next increase.

Statutory Authority G.S. 126-4(6),(10).

SECTION .0600 - REALLOCATION

.0610 REALLOCATION TO A LOWER GRADE

(a) When an employee's position is assigned to a lower grade, ~~the employee's salary may remain the same if it is within the lower range; or it may be reduced to any salary in the lower range to equitably relate to other employees' salaries in the same or related classifications.~~

(b) If the employee's salary is above the maximum of the grade to which the position is assigned, one of the following options will apply:

(1) When reduction in level of the position results from management decisions on program changes, reorganization, or other management needs not associated with the employee's demonstrated motivation, capability, acceptance of responsibility or lack of performance, ~~the salary of the employee may remain above the new maximum as long as the employee remains in the same classification or is promoted to a higher level position. No further increases, other than legislative increases, may be granted as long as the salary remains above the maximum. If, however, a position is available, the level of which would not be as detrimental to the affected employee, and if the employee is qualified but not placed into the position, then the option in Paragraph (2) of this Rule shall apply. the position must be reallocated to the approved classification and grade in accordance with the provisions of 25 NCAC 1D .0609(b). RE-ALLOCATION TO A HIGHER GRADE.~~

(b) ~~(c)~~ It is a management responsibility to avoid creation of salary inequities among employees. Each case must be evaluated to determine which of the salary administration

alternatives is most appropriate, based on the circumstances as documented by the employing agency.

Statutory Authority G.S. 126-4.

SECTION .0700 - SALARY RANGE REVISION

.0701 DEFINITION

(a) Salary range revision is any change in a salary range approved by the State Personnel Commission, and resulting from changes in the labor market, organizational restructuring or technical adjustments initiated for salary administration purposes.

(b) The primary purpose of a range revision is to provide current and competitive hiring rates for the use of managers with recruitment responsibilities. Revisions resulting from upward changes in the labor market serve another purpose in helping reduce the vulnerability of employees to external job offers when their salaries are below the market average as reflected by the mid-point of the salary range.

Statutory Authority G.S. 126-4.

.0706 RANGE REVISIONS DUE TO CHANGES IN THE LABOR MARKET

When an ~~employee's position~~ a classification is assigned to a higher grade as a result of ~~salary range revision~~, changes in the labor market, subject to the availability of funds and satisfactory employee performance, salary increases, not to exceed the maximum of the range, may be given in accordance with the following:

- (3) Salaries within the range ~~may remain the same or do not have to be increased; but,~~ if funds are available and where appropriate, individual salary increases may be considered, the total not to exceed five percent for each salary grade provided by the salary range revision. Salary equity within the work unit and other management needs must be given consideration when making such requests.

Statutory Authority G.S. 126-4.

.0711 RANGE REVISIONS DUE TO TECHNICAL ADJUSTMENTS BY OSP

Revisions of this type involve changes to the classification structure such as inserting new ranges, renumbering the ranges, establishing new classification structures for specialized occupational groups, and changing the length of ranges. There shall be no salary changes resulting from technical adjustments.

Statutory Authority G.S. 126-4.

.0712 RANGE REVISIONS DUE TO ORGANIZATIONAL RESTRUCTURING

Revisions of this type may occur through internal reorganization or changes in class specifications and salary increases or decreases are not contemplated. However, if substantial increase or decrease of position responsibilities should accompany the range revision, and can be properly documented, the rules in this Section for labor market changes may be applied as a management prerogative.

Statutory Authority G.S. 126-4.

SUBCHAPTER 1K - PERSONNEL TRAINING

SECTION .0500 - APPRENTICESHIP TRAINING

.0502 APPOINTMENT PROVISIONS

All applicants and employees entering apprenticeship programs shall be subject to the trainee appointment provisions of the State Personnel Commission. (See 25 NCAC 1D, Section .0200, Rules .0208 - .0209.) All persons entering an apprenticeship program supported by funding from positions subject to the State Personnel Act shall receive a regular trainee appointment, and shall receive the same employment benefits as other SPA employees with trainee appointments. Upon successful completion of an apprenticeship program, an apprentice who enters regular state employment shall receive a permanent appointment.

Statutory Authority G.S. 126-4.

SUBCHAPTER 1L - AFFIRMATIVE ACTION

SECTION .0200 - ACQUIRED IMMUNE DEFICIENCY SYNDROME (AIDS) IN THE WORKPLACE

.0201 PURPOSE

North Carolina state government acknowledges its obligation as an employer to provide a safe and healthful work environment for all of its employees. Furthermore, the State recognizes the employment-related rights and concerns of employees who may be exposed as a part of their job duties to or who may have HIV infection. In light of the concerns and the increasing incidence of AIDS, an infectious disease not transmitted by casual contact, state government has developed this policy to provide implementation guidance for all managers and employees on how to deal with AIDS in the workplace. Further, this policy has been developed to address morale,

productivity, safety, anti-discrimination, confidentiality and other areas that are impacted by this policy.

Statutory Authority G.S. 126-4.

.0202 POLICY

It is the policy of state government to provide a work environment to protect the health and well being of all of its employees. To this end, the state will provide education and training, work practices, procedures, and ensure that employees who are exposed to or have HIV infection are provided with confidential, fair and equal treatment. Additionally, this policy outlines the rights and responsibilities of supervisors and employees regarding HIV infection in a work environment.

Statutory Authority G.S. 126-4.

.0203 EDUCATION AND TRAINING

All agencies and institutions of State government will undertake an education and training program. This program will have two components: a basic education and training component for all employees and an advanced education and training component for employees who perform tasks that have a greater potential for exposure to the HIV virus.

Statutory Authority G.S. 126-4.

.0204 BASIC EDUCATION AND TRAINING COMPONENT

(a) To insure consistency the Office of State Personnel, with guidance from the State Public Health Director, will identify or develop basic education and training programs which agencies provide for their employees.

(b) Through the WISE program coordinators in each agency and with the assistance of professional health educators, all employees will be offered training within two years from the adoption of this policy, and thereafter for new employees within six months of initial employment. A Certificate of Completion will become a part of the employee's personnel record.

Statutory Authority G.S. 126-4.

.0205 ADVANCED EDUCATION AND TRAINING COMPONENT

(a) The Office of State Personnel will identify training modules and resources as approved by the State Public Health Director which will address the special education and training needs of employees who perform work related tasks that have a potential for exposure to the HIV virus.

Each agency shall adopt these resources to their own work force needs.

(b) Each agency with employees requiring advanced training will provide such training within six months from the adoption of this policy. Agencies must provide training for new employees during their work orientation period. The Agency shall appropriately document the employees' compliance with this policy.

(c) All employees shall periodically be provided updated general public health information issued by the State Public Health Director or the U.S. Centers for Disease Control. Such educational literature shall be distributed as appropriate after further approval by the State Personnel Director in consultation with the State WISE Advisory Board. Appropriate records are to be maintained by the agency as proof of completion of any periodic update of employee education.

Statutory Authority G.S. 126-4.

.0206 ANTI-DISCRIMINATION

It is the State's policy not to discriminate against any applicant or employee because he is suspected of having AIDS or HIV infection. The State recognizes that employees with AIDS or HIV infection may wish to continue working. As long as employees are able to satisfactorily perform the duties of the job and there is no medical evidence indicating that their condition is a health threat to themselves, co-workers or the public, employees shall not be denied continued employment solely because of their medical condition.

Statutory Authority G.S. 126-4; 168A-3(9).

.0207 TESTING AND EXAMINATION

Medical tests and examinations to determine the presence of HIV associated conditions are prohibited except as authorized by state and federal law or required by the rules of the Commission for Health Services. An employee who suspects that he has had a nonsexual blood or body fluid exposure to the HIV virus while on the job may voluntarily elect to be tested for the virus, provided that the suspected exposure can be verified by a medical expert as an exposure that poses a significant risk of transmission of HIV. The cost of tests for the exposed employee shall be borne by the employer, if requested by the employee. Some employees may prefer to pay for their own test through a personal or family physician, or use the free testing of a Public Health Department.

Statutory Authority G.S. 126-4.

.0208 CONFIDENTIALITY

Confidentiality shall be strictly maintained by the agency for any employee with HIV associated conditions required by existing confidentiality rules and laws. Any current confidentiality policies that are in force shall be updated by the agency to include the HIV policy.

Statutory Authority G.S. 126-4.

.0209 COMPLAINTS AND DISCIPLINE

The State acknowledges that employees with HIV infection as well as their co-workers may have concerns for their own health and safety. Managers are to pursue all appropriate actions to respond to the concerns of all employees. The state recognizes the rights of employees to griev-

ance procedures. The employer has an equal right to maintain a harmonious and productive work environment that is free from disruptive or inconsiderate behavior, or from the refusal of any employee to perform work at assigned times and locations. If insubordinate or disruptive actions occur, managers are to follow the normal disciplinary procedures described in 25 NCAC 1J .0600, DISCIPLINARY ACTION, SUSPENSION AND DISMISSAL; provided, however, an agency or institution shall first provide counseling by a medical expert to an employee who fears that a serious health risk is created by the presence of a co-worker who has AIDS or HIV infection.

Statutory Authority G.S. 126-4.

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